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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 11 अगस्त, 2010

आ.अ. 37(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2009 की निर्वाचन अर्जी संख्या 3/2009, 7/2009 एवं 8/2009 में केरल उच्च न्यायालय का निर्णय तारीख 26 जुलाई, 2010 को इसके द्वारा यहां प्रकाशित करता है ।

(निर्णय अंग्रेजी भाग में छपा है ।)

[फा. सं. 82/केरल-लो.स./(3,7 एवं 8/2009)/2010]

आदेश से,

तपस कुमार, प्रधान सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 11th August, 2010

O. N. 37(E).— In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment of the High Court of Kerala dated 26th July, 2010 in Election Petitions No. 3/2009, 7/2009 and 8/2009.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

Monday, the 26th July, 2010/4th Sravana 1932

El. Pet. No. 3 of 2009 ()

PETITIONER:

N.S. Saji Kumar S/o Sankaran,

45 years, Nedumchira Veedu, Kainady, P.O.

Kuttanadu Taluk, Alappuzha District.

By Adv. Sri. K. Ramakumar, Senior Advocate
Sri. T. Ramprasad Unni

RESPONDENT(S):

Kodikunnil Suresh @ J. Monian,

Aged 47 years, S/o Joseph, School view,

Kizhakkekara, Kottarakkara. P.O., Kollam District.

Adv. Sri. S. Vinod Bhat For R 1

Sri. K. Harilal For R 1

Sri. Johnson Abraham (Mavelikkara) For R 1

Sri. R.D. Shenoy, Senior Advocate For R

Sri. S. Vinod Bhat

Sri. K. Harilal

Sri. Johnson Abraham (Mavelikkara)

This Election Petition having been finally heard on 4/6/2010 along with EP No. 7 of 2009, EP No. 8 of 2009

The Court on 26/7/2010 Delivered the Following :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

Monday, the 26th July, 2010/4th Sravana 1932

El. Pet. No. 7 of 2009 ()

PETITIONER :

R.S. Anil @ Anilkumar, Aged 36 Years,
S/o. Late P.K. Raghavan, Ganga Bhavan,
Sasthamkotta. P. O., Kollam District.

By Adv. Sri. A. Jayasankar, Sri Manu Govind
Smt. B. Meera

RESPONDENT(S):

Kodikunnil Suresh @ J. Monian,
Aged 47 years, S/o Joseph, School view,
Kizhakkekara, Kottarakkara. P.O., Kollam District.
By Adv. Sri. R. D. Shenoi (Senior)
Adv. Sri. S. Vinod Bhat
Sri. K. Harilal

This Election Petition having been finally heard on 4/6/2010 along with EP No. 8 of 2009, EP No. 3 of 2009
The Court on 26/7/2010 Delivered the Following :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present :

THE HONOURABLE MR. JUSTICE M. SASIDHARAN NAMBIAR

Monday, the 26th July, 2010/4th Sravana 1932
El. Pet. No. 8 of 2009 ()

PETITIONER:

Padmakaran, Aged 57 Years,
S/o. Krishnan, Unniyapallathu,
Thiruvanmandoor, Chengannoor, Alappuzha.

By Adv. Sri. C. Rajendran

RESPONDENT(S):

Kodikunnil Suresh, Aged 47 years,
S/o Rosily, School View, Kizhakkekara,
Kottarakkara, Kollam District.
By. Adv. Sri. R. D. Shenoi (Senior Advocate)
Adv. Sri. S. Vinod Bhat
Sri. K. Harilal

This Election Petition having been finally heard on 4/6/2010 along with EP No. 7 of 2009 and EP No. 3 of 2009
The Court on 26/7/2010 Delivered the Following :

M. SASIDHARAN NAMBIAR, J.

E.P. No.3, 7 & 8 of 2009

Dated this the 26th day of July, 2010

Judgment

Petitioners in E.P.3/2009 and 8/2009 are voters of Mavelikkara Parliamentary Constituency. Petitioner in E.P.7/2009 is the defeated candidate in the election. E.P. 3/2009 and E.P.8/2009 are filed under section 100(1) (a) of the Representation of People Act to declare the election of the respondent from No.16 of Mavelikkara Parliamentary constituency to the Lok Sabha void and to set aside the election. The ground in both the petitions is the same. Respondent the elected candidate was not qualified to contest the election for a Constituency reserved for Scheduled Caste as he is not a member of the Scheduled Caste and instead is a Christian. In E.P.7/2009 in addition to the ground taken in the other two election petitions, petitioner sought to set aside the election under section 100 (1) (d) (i) on the ground that the nomination of the respondent a Christian who is not qualified to contest from a reserved Constituency ought to have been rejected by the Returning Officer and the improper acceptance of the nomination paper by the Returning Officer has materially affected the result of the election and on that ground also, election of the respondent is void and is to be set aside. No.16 Mavelikkara Parliamentary Constituency was a reserved Constituency for Scheduled Caste. The last date for submitting the nomination paper was 30-3-2009. The date for scrutiny of the nomination paper was 31-3-2009. The last day for withdrawal of the valid nomination papers was 2-4-2009. The polling was conducted on 16-4-2009. The votes were counted on 16-5-2009. Respondent the candidate of Indian National Congress secured 3,97,211 votes. Petitioner in E.P.7/2009 a candidate of the Communist Party of India secured 3,49,163 votes. Respondent was declared elected with a margin of 48048 votes. As the election challenged in all these cases is of the same Parliamentary Constituency, all the three petitions were jointly tried and E. P. 3/2009 is treated as the main case.

2. The case of the Election Petitioner in E. P. 3/2009 is that under Article 366 (24) of the Constitution of India scheduled caste is defined as means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 of the Constitution to be scheduled castes for the purpose of Constitution and under Article 341, the President of India may with respect to any State or Union Territory after consultation with the Governor by public notification specify the castes, races or tribes which shall for the purposes of the Constitution of India be deemed to be Scheduled Castes in relation to that State as the case may be and as per the Constitution. Scheduled Caste Order 1950, the caste shown in Part VIII are declared as Scheduled Caste in the State of Kerala and under Entry 54, Pulayan, Cheramar, Pulaya, Pulayar, Cherama, Cheraman, Wayanad Pulayan, Wayanadan Pulayan, Matha, Matha Pulayan are the Scheduled Castes. Under Section 4 of the Representation of People Act a person shall not be qualified to be chosen to fill a seat in the House of the people unless in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Caste of that State or any other State and is an elector for any Parliamentary Constituency. The respondent is not a Scheduled Caste qualified to stand for election to a Constituency reserved for Scheduled Caste. It is contended that along with the nomination paper respondent submitted a declaration that he is a member of Hindu Cheramar Community and

produced a certificate issued by Tahsildar, Nedumangad that he belongs to Hindu Cheramar by a Suddhi certificate dated 25-5-1978 issued by Kerala Hindu Mission, he converted from Christianity to Hinduism and his name was changed from Monian, J., S/o. Joseph to J. Suresh and the conversion was published in the Gazette on 21-11-1978 and the Returning Officer did not make any mention of the Gazette publication or the conversion certificate relied on by the respondent. Even though he produced two divergent caste certificates, one that he belongs to Hindu Cheramar and the other Hindu Pulaya, at the time of scrutiny though the qualification of the respondent was disputed, this was not properly considered and the nomination of the respondent was accepted. He was later declared elected. It is contended that the name of the respondent is J. Monian and the name of his mother is Rosily and in S.S.L.C examination and the certificate issued thereto, respondent was shown as a Christian Cheramar and though a Notification was published in the Kerala Gazette dated 1-6-1978 by the brother of the respondent that respondent has changed his religion from. Christianity to Hinduism and name was also changed to J. Suresh, the school records where he studied including the S. S. L. C book show that he is a Christian Cheramar, son of Thankamma who is a Christian Gazette publication by the brother is not valid. It is contended that respondent never practiced Hindu religion and even if he was converted to Hinduism, he cannot convert himself as a Hindu Cheramar as his parents admittedly belong to Christian religion which is not a Scheduled Caste as per the Constitution (Scheduled Castes and Scheduled Tribe) Order, 1950 issued by the President of India and respondent was all along living as Christian. He was attending Churches. It is further contended that the Scheduled Caste community never accepted the respondent as a member of their community and a person who was born to Christian parents, brought up as a Christian, studied as a Christian, passed SSLC examination as a Christian, cannot later declare himself that he is a Hindu Cheramar. It is also contended that when the caste certificate issued by Tahsildar Nedumangad shows that respondent a Hindu Cheramar, Tahsildar, Kottarakkara certified that he is a Hindu Pulayan. Respondent cannot claim to be a Cheramar and Pulayan at the same time as both are distinct and different castes. It is also contended that the caste certificate issued by the Tahsildar, Nedumangad is a fake certificate which is not valid and it was not issued after inquiry as provided under the provisions of Kerala (Scheduled Castes/Scheduled Tribe Regulation of Issuing Community Certificate) Act, 1996 and no application as provided under the Act was submitted and no inquiry as provided therein was conducted and the certificate was not issued in the prescribed form. Respondent and his family have been living as Christians in Vembayam and it is gathered that they were attending nearby Churches. The members of the family and relatives of the respondent are also doing that and he has been living as Christian without any caste and the Cheramar Pulayan community never accepted respondent as a member of that community and therefore election of the respondent is liable to declared void and is to be set aside.

3. The petitioner in E. P. 7/2009 reiterating the very same contentions additionally contended that the school register maintained by the Government Higher Secondary School, Ayiroopara indicates that Joseph, the father of the respondent was the guardian and Thankamma was the mother and Suseelan, his brother has no authority to change the religion or name of his minor brother. The respondent is a native of Kodikunnil Theepukal Muri of Vembayam Village in Nedumangad Taluk. His parents are late Joseph and mother Smt. Thankamma. Both are Christians Respondent was born on 4- 6-1972 and was baptised as a Christian in Malankara Catholic Church, Ayiroopara. He studied in Government Upper Primary School, Ayiroopara from Standards I to VII, and in Lakshmi Vilas High School, Mandavakunnu from Standard VIII to X. The records maintained in both schools indicate that he is a Cheramar Christian and he joined in GHSS, Ayiroopara on 7-6-1967and in the admission register also name of the parent is Joseph and religion Christian Cheramar and in the S.S.L.C. book he is shown as Christian Cheramar. On 1-6-1978 his brother Suseelan made a publication in the Kerala Gazette that he changed the name of his minor brother J. Monian from Christianity to Hinduism with the name J.Suresh. But the SSLC book shows his name as Moniar and caste Christian It is contended that respondent had never practiced Hindu religion and was not a member of Scheduled Caste Hindu Cheramar. Upto 1989 he has not claimed that he belongs to Hindu Cheramar community. In 1989 he contested from the Adoor SC reserved Parliamentary Constituency on the strength of bogus certificates issued and thereafter he fabricated various documents and claims that he is a member of Hindu Cheramar community. A person born to Christian parents and brought up as a Christian cannot become a member of Scheduled Caste community, even if he converts to Hinduism from Christianity. Membership in a particular caste in Hindu religion can only be by birth and nobody can acquire membership in a particular caste, especially a Scheduled Caste by conversion/change of religion. He filed an application on 7-3-2009 before Tahsildar, Nedumangad to issue a caste certificate claiming that he is a Hindu Cheramar and son of late Kunjan and the report of the Village Officer indicates that his parents both belong to Hindu Cheramar community. A caste certificate was issued on 12-3-2009 showing the name of his father as Kunjan, though as matter of fact, his name was Joseph till his death. Father of respondent could not have converted to Hinduism posthumously. Respondent had submitted another application before Tahsildar, Kottarakkara on 4-3-2009 to issue a caste certificate claiming that he is a member of Hindu Pulaya Community. A report was submitted by the Village Officer on 5-3-2009 showing that he is son of late Kunjan and Thankamma and he belongs to Hindu Pulayan community and practising Hindu rites. The caste certificate so issued

is false. The Returning Officer in his anxiety to accept the nomination paper of the respondent, overlooked the glaring contradictions in the caste certificates. Therefore his nomination paper was improperly accepted. It has materially affected the result of the election. Petitioner contended that the election of the respondent be declared void on the ground that respondent was not qualified to stand for election in a Constituency reserved for Scheduled Caste and also because his nomination paper was improperly accepted which has materially affected the result of the election. It was prayed that the election of the respondent is void and is to be set aside.

4 . Petitioner in E.P.8/2009 claiming to be an elector belonging to Scheduled Caste contended that respondent being not a member of a Scheduled caste, is not qualified to stand for election in a Constituency reserved for Scheduled Caste and respondent was never a Pulaya or Cheramar, from the date of birth. He continued to be a Christian. Therefore he is disqualified to claim any of the privileges or reservation or benefits available to the members of the Scheduled Caste. Petitioner sought to declare the election void, as respondent is not qualified to stand for election in a Constituency reserved for Scheduled Castes.

5. Respondent filed separate written statement in all the cases raising identical contentions. Respondent contended that under Entry 54 of the Constitution (Scheduled Caste) Order, 1950, Pulayan and Cheramar are Scheduled Castes and a member of Cheramar Community is qualified to stand for election in Mavelikkara Parliamentary Constituency, which is reserved for Scheduled Caste. Respondent submitted four sets nomination papers on 23-3-2009 complying with the legal requirements. After scrutiny of the nomination papers on 31-3-2009, his nomination papers was accepted.The polling was on 16-4-2009 and counting was on 16-5-2009. On 16-5-2009 he was declared elected. The name of the father of the respondent is Kunjan and mother Thankamma. Of the children born to them, respondent is the fourth child. His elder brother is K.Susheelan and younger sister is T. Anila and the name of the elder sister is T. Leela. The Cheramar caste is included in Entry 54 as a scheduled caste. Historically members of the Pulaya Caste, in course of time had changed the name to Cheramar, though many of its members adhered to the practice of calling themselves Pulaya. Whether Pulaya or Cheramar, both are included in Entry 54. Kunjan was illiterate. So also his mother Thankamma. The family was poverty stricken. Kunjan was of ill health and could do only menial work in connection with agriculture which was seasonal. Hence parents of the respondent could not find a way to maintain the family. They decided to avail the reliefs extended by Christian Missionaries to the poor. In course of time, father of the respondent was named as Joseph by Christian missionaries who called him by that time. He used to acknowledge the name. He went to the missionaries only to avail the relief, such as milk powder, bread and American wheat and was not converted to Christianity. He continued to be called as Kunjan by members of his caste. The relationship between the members of his caste and father of the respondent was cordial. The members of his caste did not see any reason to outcaste or to excommunicate him. Parents also never desired or intended to break the social ties with their caste and their members. The Christian missionaries were tolerant and has not raised any objection in the parents of the respondent keeping the pictures of Hindu deities in their house or worshipping them. Social customs of their community were maintained in the family of the respondent. The conversion if at all was only nominal. It is also contended that in the erstwhile Travancore-Cochin State, it is usual to find persons converted to Christianity, retaining their original caste. The parents of the respondent did not abjure Hindu religion. The parents of the respondent irrespective of the question whether they abjured or not abjured Hindu religion, retained their caste, Cheramar. The caste is evident in the SSLC book and school admission registers. After attaining the age of discretion and gaining knowledge of the world affairs, the children of the convert are at liberty to revert to Hindu religion. The information gathered by the respondent was that the school records pertaining to the respondent maintained in Government Secondary School, Ayiroopara, showed the name of the father of the respondent as Joseph and the religion as Christian. So also records maintained in LVHS, Pothencode showed the name of the respondent as Monian and mother as Thankamma. His religion in those records are shown as Christian and caste Cheramar. In view of these entries, respondent decided that the cloud created by the school records to the effect that respondent is a christian which is nothing but thrusting on the respondent the Christian religion must be removed. Accordingly respondent underwent expiatory ceremonies and was given Suddhi certificate by Kerala Hindu Mission in May 1978. Thus the religion of christianity thrust upon the respondent was got rid of by his reconverting to Hinduism. The change of his name as Suresh and,fact that he has converted to Hindu Religion were published in the Gazette in 1978 itself which was done with full publicity and voluntarily. Suseelan, who published the Gazette Notification is his elder brother. Father of the respondent died in 1970. Mother was illiterate. It was in such circumstances, Suseelan was looking after his family as guardian and took steps to effect Gazette Notification. What all things respondent was made to do, during his childhood, is of no relevance as he has no knowledge as to what was being done and what is religion. The respondent decided to get converted to Hinduism. He underwent Suddhi ceremonies and converted to Hinduism. His conduct after 1978 is clear and conclusive that he is a Hindu and member of Cheramar caste. During his studies he conducted himself as a student, whose religion is Hindu and whose caste is Cheramar. He never used to attend the Church after he came back to Hinduism. He has been offering worship to Hindu deities in temples. In 1994 he married Hindu, a member of scheduled caste who hails from Palakkad. The marriage was performed in accordance with the customs and rules prevalent among the members

of the Cheramar Caste. The marriage was conducted in Subramaniyam Hall, Vazhuthakad. After he came of age, he did not profess christianity. But he professed only Hindu religion. He joined in Law College in 1984-85 and completed LLB course in 1989. He availed the benefits extended to scheduled caste during the period of his studies. In 1989, he contested election from Adoor Parliamentary Constituency which was reserved for scheduled caste and was declared elected. In 1992 he again contested from the Parliamentary Constituency reserved for scheduled caste and was declared elected. In 1996 he again contested from Adoor Parliamentary Constituency. He was declared elected. In 1999 he again contested from same Parliamentary Constituency. It was also reserved for scheduled caste. He was declared elected. The electorate have given a majority verdict in favour of the respondent. Election of the respondent from the Parliamentary Constituency was not challenged by any of the rival candidates or electors on the ground that he is a christian or that he is not a member of scheduled caste. Acceptance by the members of scheduled caste that respondent is a Hindu Cheramar is thus beyond challenge. The members of scheduled caste accepted the respondent as a member of their caste, which is more important than expiatory ceremonies, as there is no necessity to undergo any expiatory ceremonies before reconversion. In the house of the members of the family of the respondent, they worship only Hindu deities. The Presidential Order cannot be understood as indicating that Pulaya and Cheramar are distinct and different castes. In spite of conversion parents had retained the original caste. The Tahsildar, Nedumangad issued the caste certificate showing that respondent belongs to Hindu Cheramar caste. The certificate cannot be questioned. To the best recollection of the respondent, he contested the previous election as a member of Cheramar caste. The allegations contrary is not correct. The validity of certificates issued by the Revenue Authorities cannot be challenged in an election petition. Even if there is loss of caste of the parents of the respondent, on conversion of the respondent to Hinduism, he got back the caste which even otherwise was not lost. As the respondent was qualified to stand for election, his election is not void and it cannot be set aside.

6. In E.P. 7/2009 respondent has reiterated the very same contentions and also contended that there was no improper acceptance of the nomination paper. Respondent contended that name of the father of the respondent was Kunjan and mother Thankamma and both are Hindus and respondent was not baptised as a Christian and on coming of age, he converted to Hinduism and had undergone expiatory ceremonies and was given suddhi certificate and the members of the Cheramar caste received and accepted the respondent as a member of their caste and the father of the election petitioner P. K. Raghavan had contested election against the respondent previously and the fact that respondent is a member of the scheduled caste was not disputed by him and respondent has not fabricated any document as alleged. The election is not void and cannot be set aside. In E.P. 8/2009 also respondent filed a similar written statement reiterating the same contentions and asserting that he was qualified to stand for election in Mavelikkara Constituency reserved for Scheduled Caste as he is a member of the Scheduled Caste.

7 . On the pleadings in E.P. 3/2009 the following issues were framed.

(1) Whether the respondent would be a Christian, if his parents are Christians?

(2) Whether there was a re-conversion in 1978 and based on the gazette notification dated 20-11-1978 respondent can claim to be a member of Scheduled Caste.

(3) Whether respondent was a member of the Scheduled Caste as per Part VIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950 on 16-5-2009, the date of the election and whether he was qualified to stand for the election in a Constituency reserved for Scheduled Castes?

(4) Whether respondent was qualified to contest the election in a reserved Constituency, in terms of Section 33 (2) of Representation of People Act, 1950?

(5) Whether election of respondent to No. 16 Mavelikkara (Scheduled Caste) Parliamentary Constituency is liable to be set aside?

8 . In E.P. 7/2009 the following issues are framed.

(1) Whether the respondent is a Christian for the reason that he was born to Christian parents.

(2) Whether there was a reconversion of the respondent to Hindu religion in 1978 and if so whether by Gazette Notification dated 20-11-1978, respondent could claim to be a member of Scheduled Castes as provided in Part VIII- of schedule to the Constitution (Scheduled Castes) Order 1950?

(3) Whether the respondent was a member of any of the scheduled caste as per Part VIII of schedule to the Constitution (Scheduled Castes) Order, 1950 on 16-5-2009, the date of election?

(4) Whether there was improper acceptance of the nomination paper of the respondent and if so whether the result of the election was materially affected by such acceptance?

(5) Whether the election of the respondent to Mavelikara Lok Sabha Constituency is liable to be set aside?

9. In E.P. 8/2009 the following issues are framed.

(1) Whether the respondent is a Christian as his parents are Christians?

(2) Whether there was a re-conversion in 1978 and whether by gazette notification dated 20-11-1978 respondent became a member of Scheduled Caste, as provided in Part VIII of Schedule to the Constitution (Scheduled Castes) Order, 1950.

(3) Whether respondent was a member of the Scheduled Caste as per Part VIII of the Schedule to the constitution (Scheduled Castes) Order, 1950 on 16-5-2009, the date of the election and was he qualified to contest the election for a Constituency reserved for Scheduled Castes?

(4) Whether election of the respondent to 16th Mavelikkara Parliamentary Constituency is liable to be set aside?

10. Petitioner in E. P. 3/2009 was examined as PWI and petitioner in E.P. 8/2009 as PW2. Petitioner in E.P. 7/2009 was not examined. His election agent was examined as PW 3. The Deputy Tahsildar, Pathanamthitta who was the Tahsildar, Nedumangad who issued Ext. XI (a) caste certificate to the respondent was examined as PW4. The Headmistress of Ayiroorpara Government Higher Secondary School was examined as PW5 to prove Ext. P9 the school admission register extract of the respondent. The then District Collector of Alappuzha, who was the Returning Officer of Mavelikkara Parliamentary Constituency, was examined as PW 7. The then Tahsildar, Kottarakkara who issued Ext. P1 caste certificate to the respondent was examined as PW 8. The Village Officer, Vembayam who submitted the report based on Ext.XI (a) application, filed by respondent on which Ext. XI(b) report was prepared based on which Ext.XI (c) certificate was issued, was examined as PW 9. The then Village Officer of Kottarakkara who submitted Ext. X3(b) report of Ext.P1 certificate was examined as PW10. Respondent was examined as RW1. The Principal of Law College was examined as RW 2 to prove Ext.R6, the admission register extract of the respondent issued from Law College. The President of Kerala Hindu Mission a practising advocate of Thiruvananthapuram was examined as RW 3 to prove the suddhi certificate issued by the Kerala Hindu Mission. A resident of Adoor Parliamentary Constituency who belongs to Scheduled caste was examined as RW 4 to prove that marriage of the respondent was performed in accordance with the religious practice of their caste. The General Secretary of Kerala Pulaya Mahasabha was examined as RW5 to prove that respondent had participated in the rally and public meeting held by Kerala Pulaya Mahasabha at Ernakulam. An old classmate and friend of the respondent, though belonged to Nair community, was examined as RW 6. RW 7 who was the Secretary of Kerala Cheramar Sangham was examined to prove Exts. R17 and 19 issued by the Kerala Cheramar Sangh in favour of the respondent. In addition Ext. X 1 file relating to the issuance of caste certificate by Tahsildar, Nedumangad, Ext. X 2 file relating to the caste certificate issued by the Tahsildar, Nedumangad and Ext. X 3 file maintained by Tahsildar, Kottarakkara were marked on the side of the petitioners and Exts. R 1 to R 22 on the side of the respondent.

11. Issue Nos. 1, 2, 4 in E.P. 3/2009, and 1 to 3 in E.P. 7/2009, and 1 to 3 in E.P. 8/2009.

12. Learned senior counsel appearing for the petitioner in E.P. 3/2009 argued that respondent was born as a christian, to christian parents and his school records establish that his name was Monian and his father was Joseph and mother Thankamma and respondent is a Christian and hence he is not a member of the scheduled caste at all as there cannot be a scheduled caste in christians. Learned senior counsel argued that when Section 4 of the Representation of People Act mandates that a person shall not be qualified to be chosen to fill a seat in the House of the People in a Constituency reserved for scheduled caste, unless he is a member of any of the scheduled caste. Article 366 (24) of the Constitution of India defines "Scheduled Castes" as means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution. By virtue of the powers vested under Article 341 of Constitution of India, the President issued Constitution (Scheduled Castes) Order, 1950 which was subsequently amended by the Parliament and under item No. 54 of Part VIII of Schedule 1 of the Constitution (Scheduled Castes) Order Christian is not a member of Scheduled Caste and the religion and castes are the consequence of birth and a Christian on conversion into Hinduism cannot claim to be a member of scheduled caste and respondent was born as a Christian, brought up as a Christian and lived as a Christian and so is not qualified to stand for election in a Constituency reserved for scheduled caste. Relying on. the decision of the Apex Court in V. V. Giri v. D. S. Dora (AIR 1959 SC 1318) and in Ganuram v. Rikhiramkaundal (AIR 1984 SC 1513) it was argued that it is for the respondent to establish that he is a member of a caste shown in the Presidential Order. Relying on the decision of the Apex Court in **S. Rajagopal v. C. M. Armugam**(AIR 1969 SC 101), **C. M. Arumugam v. S. Rajagopal** (AIR 1976 SC 939), it was argued that respondent cannot claim to be a member of scheduled caste by converting into Hinduism and there IS no acceptable evidence to prove that there was any valid conversion to Hinduism and in any event, there is no evidence to prove that the community of Cheramar had accepted the respondent as a member of their community. It was also argued that Ext. P 9 the admission register of Ayiroopara School, Ext. P10 the extract of the admission register of LVHS, Pothancode and Ext. R2 the original SSLC book, all establish that respondent is a Christian and he is not a member of scheduled caste as provided in the Constitution Order. Learned senior counsel argued that though reliance was placed on the alleged conversion in 1978, the conversion into Hinduism is not proved and it cannot be valid. It was argued that the Suddhi certificate was obtained and Gazette Notification was published, at a time when respondent was a minor and under the Indian Majority Act respondent being a minor was not entitled to act on his own and Suseelan his brother who effected the publication is not the legal guardian or natural guardian of the respondent and therefore he has no authority to make a publication. In the Gazettee and when the alleged Suddhi ceremony was performed, respondent was a minor and a minor is not entitled to convert to another religion and

based on the suddhi certificate or the Gazette Notification, respondent cannot claim to be a member of Hindu religion much less a member of scheduled caste. Learned senior counsel argued that even if there was a valid conversion from Christianity to Hinduism, on such conversion, the person so converted cannot claim the status of scheduled caste and there is absolutely no evidence to prove that respondent was accepted by the members of the community to their fold and therefore even if there was conversion, respondent cannot claim the status of a member of scheduled caste. Learned senior counsel also argued that the caste certificate issued by the Tahsildar, Nedumangad relied on by the Returning Officer to accept the nomination paper, was not issued following the procedure as provided under the Kerala Scheduled Caste, Scheduled Tribe Issuance of Community Certificate Order 1996 and was procured by the respondent using his political influence and the certificate is a fraud on the Constitution and should not have been relied on. It was argued that the evidence establish that no application was submitted by the respondent as provided under the Act or the Rules and no inquiry was conducted as contemplated under the Act and on the submission of the application, without conducting any inquiry, the caste certificate was issued which is invalid. It was also argued that the caste certificate was not issued in the form prescribed under the Act and Rules and on that ground also the caste certificate is to be ignored. Learned senior counsel argued that on the evidence, respondent did not establish that he is a member of Hindu Cheramar caste and before the Tahsildar, Kottarakkara respondent has claimed that he is a member of Pulaya community and also procured a certificate to that effect and a person cannot claim to be a Cheramar and a Pulaya at the same time as both are different and distinct castes as per Entry No.54 .of Part VIII of Schedule 1 of the Constitution (Scheduled Castes) Order 1950 and in such circumstances it can only be found that respondent was not qualified to stand for election in a Constituency reserved for scheduled caste. Learned senior counsel argued that the principles of res judicata has no application to an election petition and the fact that respondent was declared elected in the previous elections for a Constituency reserved for Scheduled Castes is not relevant in deciding the present petition, when the evidence establish that respondent is not a member of scheduled caste, as provided in the Constitution (Scheduled Castes) Order, 1950 and hence his election can only be declared void as he is not qualified to stand for election to a Constituency reserved for Scheduled Caste.

13. Learned counsel appearing for the petitioner in E.P.7/2009 and E.P.8/2009 also reiterated the same contentions. Learned counsel argued that the school registers which are binding on the respondent establish that his name was J. Monian and he was born to christian parents and was brought up as christian and he studied as a christian and only later in 1978 for ulterior motive through the brother respondent procured a Suddhi certificate and effected a Gazette Notification and claimed that he was converted to Hindu Cheramar which is not permissible in law and therefore based on the conversion or performance of the Suddhi or Gazette Notification, respondent cannot claim to be a Scheduled Caste and therefore he is not qualified to stand for election in a Constituency reserved for scheduled caste. Learned counsel for the petitioner in E.P.7/2009 also argued that before the Returning Officer specific objection was raised to the effect that respondent is a christian and not a member of the Scheduled Caste and therefore he is not qualified to stand for the election and the Returning Officer without conducting any inquiry at the time of scrutiny as provided under section 36 of Representation of People Act, improperly accepted the nomination paper submitted by the respondent and it has materially affected the result of the election. Learned counsel pointed out that along with the nomination paper respondent declared, that he is a member of the Cheramar community and a caste certificate issued by the Tahsildar, Nedumangad was pressed into service and at the time of scrutiny when it was contended that respondent is not a member of scheduled caste and therefore not qualified to stand for election, as a member of scheduled caste, he produced a caste certificate issued by Tahsildar, Kottarakkara to the effect that he is a member of Pulaya community. As Pulaya and Cheramar are different and distinct castes, the Returning Officer should not have accepted the nomination paper based on the caste certificate showing that he is a member of Cheramar. Learned counsel therefore argued that as the respondent is not qualified to stand for election to a Constituency reserved for Scheduled Caste, his election is to be declared void.

14. Learned senior counsel appearing for the respondent argued that the parents of the respondent were not converted to Christianity and they are Hindu Cheramar. Learned senior counsel pointed out that the evidence establish that the parents of the respondent are financially poor and the father due to his illness was not able to do hardwork and they were working as agricultural labourers which was seasonal and as Christian Missionaries were providing reliefs to the poor the father of the respondent approached the Christian Missionary for help and helps were provided and the Missionaries started to call the father of the respondent as Joseph, though members of his caste continued to call his original name Kunjan and as respondent's father was being called by the Missionaries as Joseph, that name was entered in the school records and that does not mean that there was conversion. It was also argued that in any case even if there was any conversion, It was only nominal as respondent continued to live as a Hindu and was being treated as a member of Cheramar Community. Learned senior counsel argued that in any case converted parents cannot thrust their religion on their children and children coming of age are entitled to choose their religion and on such reconversion, they will go back to the original caste.

Learned senior counsel argued that as declared by the Supreme Court there is no universal rule that on conversion to christianity a person would loose his caste and especially in South India, irrespective of the conversion, one can continue to be a member of the same caste inspite of conversion and by the nominal conversion the parents did not loss their membership in the Cheramar caste. Learned senior counsel argued that in any case after the respondent attained majority, he continued to live as Hindu and as a member of Cheramar caste and therefore he is qualified to stand for election in the Constituency reserved for scheduled caste. Learned senior counsel also argued that the very fact that he was elected as a successful candidate in four Parliamentary elections previously, in a Constituency reserved for Scheduled Caste, and none challenged his election or raised objection that he does not belong to a scheduled caste, establish that he continued to live as a member of scheduled caste and even father of the petitioner in E.P.7/2009 was a Minister of Scheduled Castes and Scheduled Tribe in Kerala State and was also President of Kerala Pulaya Mahasabha and he was a candidate for the election against the petitioner earlier and after the successful election of the respondent, he did not challenge the election and it establishes that respondent is a member of scheduled caste. Learned senior counsel further argued that the very fact that respondent was elected in a Constituency reserved for scheduled caste establish that he was accepted by the members of Scheduled Caste as one of the members of that caste and the evidence establish that respondent on coming of age decided to live as Hindu and has been living as Hindu thereafter and therefore he is a Hindu Cheramar qualified to stand for election in a Constituency reserved for Scheduled Caste. Learned senior counsel also argued that historically the community was known as Cheramar and gradually it was called as Pulayan, though many continued to call themselves as Cheramar and the Caste Cheramar and Pulayan is the same caste and hence based on the caste certificate issued by the Tahsildar, Kottarakkara, it cannot be said that respondent is not a member of Cheramar caste or that he is not qualified to stand for election. Learned senior counsel argued that the evidence establish that respondent studied in the Law College as a member of Hindu Cheramar caste and a publication was effected by his brother in the Kerala Gazette to the effect that respondent has changed his name from Monian to J. Suresh and undergone Suddhi ceremony and is living as a Hindu Cheramar and in such circumstances, his election cannot be set aside. Learned senior counsel further argued that as the respondent is qualified to stand for election in a Constituency reserved, for Scheduled Caste, there is no improper acceptance of the nomination paper as contended by the petitioner in E.P.7/2009.

15. Section 4 of Representation of the People Act, 1951 provides the qualifications for membership of the House of the People. Under clause (a) , a person shall not be qualified to be chosen to fill a seat in the House of the People, unless in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency. Section 33 of the Representation of the People Act provides for Presentation of nomination paper and requirements for a valid nomination. Under sub section (2) of Section 33, in a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat, unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State. Article 366 provides that in the Constitution, unless the context otherwise requires, the expression provided therein have the meanings thereby respectively assigned to them. Under clause (24) , "scheduled caste" is defined as means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of the Constitution. Article 341 provides that the President may with respect to any State or Union Territory and where it is a State after consultation with the Governor, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to the State or Union Territory as the case may be. Clause (2) of Article 341 provides that Parliament may by law include in or exclude from the list of Scheduled Castes, specified in a Notification issued under clause (1) any caste, race, or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. Thus it is clear that scheduled caste as provided in the Constitution means only such castes races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be the scheduled caste. So also under Clause (1) of Article 341, only such castes, races or tribes or parts of or groups within castes, races or tribes included in the public notification issued by the President after consultation with the Governor of the State, alone will be deemed to be Scheduled Castes in relation to that State. Under Clause (2) of Article 341, Parliament is empowered by law to include in or exclude from the list of Scheduled Castes, specified in a notification issued under clause (1) any caste, race or tribe or parts of or groups within castes races or tribes. In exercise of the powers provided under Clause (1) of Article 341, the President of India issued the Constitution (Scheduled Castes) Order, 1950 as per S.R.O.385 dated 10-8-1950. Under paragraph (2) of the Constitution (Scheduled Castes) Order, 1950 the castes, races or tribes or parts of, or groups within castes or tribes specified in Parts I to XXXII of the Schedule to the order shall, in relation to the States to which those parts respectively, relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in

relation to them in those parts of that schedule. Paragraph 3 of the Order mandates that notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu shall be deemed to be a member of a Scheduled Caste. By Constitutional Amendment Act 15 of 1990, it was amended providing that no person who professes a religion different from the Hindu the Sikh or Buddist religion shall be deemed to be a member of the Scheduled Caste. Part.VIII relates to State of Kerala. Item 54 of Part,VIII. of the Schedule to the Constitution (Schedules Castes) Order, 1950 the caste included were Pulayan, Cheramar, Pulaya. Subsequently by Constitution Amendment Order 2002 (Act 61 of 2002) entry 54 was substituted. As per the substituted entry 54, Pulayar, Cherama, Cheraman, Wayanad Pulayan, Wayanadan Pulayan, Matha, Matha Pulayan were also added in addition to the original three to Entry 54. By virtue of the Constitution (Scheduled Castes) Order as amended by Parliament, Article 341 and Article 366 (24), only if the caste of the respondent is one among the castes provided in Part VIII, he would be qualified to stand for election in a Constituency reserved for Scheduled Caste.

16. The fact that father of the respondent was converted to Christianity though he was born as a Hindu Cheramar. was not seriously disputed at the time of recording the evidence. It was only contended that the conversion was nominal. Evidently the said contention was raised in view of the decision of the Supreme Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram (AIR 1954 SC 236) which is the often quoted decision on that point. The facts of that case reveals that Gangaram Thaware stood as a scheduled caste candidate and the nomination was rejected on the ground that he did not belong to the scheduled caste namely Mahars. The dispute was whether he ceased to be a mahars when he joined the Mahanubhava Panth. Quoting from the Imperial Gazetteer of India, it was noted that the founder of the sect repudiated the caste system as also and insisted multiplicity of gods and insisted on tne monotheistic principle. At the same time it says that he taught his disciples to eat with none but the initiated and to break off all former ties of caste and religion. It was taken note that Russel in Tribes and Castes of the Central Provinces says that Mahanubhau is a religious sect or order which has now become a caste and adds that members of the sect often act priests or gurus to the Mahars. The Election Tribunal held that there are two divisions among Mahanubhavas, one of Sanyasis who renounce the world and the other a secular one. The latter observe the caste system and follow the rituals of their own caste and carry on social contacts with their caste people and marry among them. Their Lordships held that they are not concerned with the theology and what have to be determined are the social and political consequences of such conversions and that must be decided in a commonsense practical way rather than on theoretical and theocratic grounds. Their Lordships held that conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious, beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of family and social ties and the casting off or retention of old customs and observances. It was held:—

Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason too caste or ex-communicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardly matter. The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from the new as opposed to purely spiritual advantage. On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order".

17. The observations of the Privy Council in Charlotte Abraham v. Francis Abraham (9 Moo Ind App. 195) that the (the convert) "may renounce the old law by which he was bound, as he has renounced his old religion or if he thinks fit, he may abide by the old law, not withstanding he has renounced the old religion, " modified to the effect that it is not only his choice which must be taken into account but also the views of the body whose religious tenets he has renounced, because the right that are considering is the right of the old body, the right conferred on it as a special privilege to send a member of its own fold to Parliament.Their Lordships made the following observations which would apply in their broad outline,

> "The profession of Christianity releases the convert from the trammels of Hindu law, but it does not of necessity involve any change of the any rights or relations of the convert in matters with which christianity has no concern, such as his rights and interests in, and his powers over, property. The convert, though not bound as to such matters either by the Hindu law or by any other positive law, may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters.He may have done so either by attaching himself to a class which as to these matters has adopted and acted upon some particular law, or by having himself observed some family usage or

customs, and nothing can surely be more just than that the rights and interests in his property, and his powers over it, should be governed by the law which he has adopted, or the rules which he has observed."

Supreme Court in S .Rajagopal v. C . M . Armugam (AIR 1969 SC 101) considered the question whether on conversion an Adi Dravida would loss his castes and on reconversion, he could claim the benefits of the same caste. S. Rajagopal and C.Armugam had filed nominations for election to the Mysore Legislative Assembly in the general election held in 1967. It was a Constituency reserved for Scheduled Caste. Rajagopal claiming that he is a member of Adi Dravida and thus a member of Scheduled Caste submitted the nomination paper. Armugam at the time of scrutiny of the nomination papers raised objections that Rajagopal is not a member of Adi Dravida Hindu but an Indian Christian and therefore he is disqualified to stand as a candidate for the reserved seat. The Returning Officer rejected the objection and accepted the nomination paper. Rajagopal was finally declared as the successful candidate as he received the largest number of votes. Armugam challenged the election before the High Court contending that Rajagopal is not qualified to stand for election to a Constituency reserved for Scheduled Caste as he is not an Adi Dravida but a Christian. The High Court of Mysore after trial, set aside the election declaring that Rajagopal is not a member of scheduled caste and therefore not qualified to stand for election in a Constituency reserved for scheduled caste. It was challenged before the Supreme Court Their Lordships on the evidence found that at least by 1967 when the election in question took place, Rajgopal had started professing Hindu religion. He had openly married a Hindu wife. Eventhough the marriage was not celebrated, according to the strict Hindu rites prevalent amongst Adi Dravidas, the marriage was not in Christian form. In 1961 he took the step of having his service cards corrected so as to show him as an Adi Dravida Hindu instead of Christian. It was followed by his candidature as a member of Adi Dravida Hindu Caste in the general election in 1962 and he gave out the caste of his children as Adi Dravida Hindus. Their Lordships held that subsequent correction of entries in service cards and his publicly standing as a candidate from the reserved Scheduled Caste Constituency representing himself as an Adi Dravida Hindu, taken together with the latter act of showing his children as Adi Dravida Hindus in the school records must be held to be a complete public declaration by him that he was by that time professing Hindu religion. Finally by contesting the seat reserved for a member of a Scheduled Caste on the basis that he was an Adi Dravida Hindu, he purported to make a public declaration of his faith in Hinduism. Therefore it was held that at the relevant time in 1967 he was professing Hindu Religion so that paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 did not apply to him. Their Lordships then considered the question whether a Hindu converted to christianity on reconversion, can claim the original caste. Their Lordships held:

"We agree with the High Court that, when the appellant embraced Christianity in 1949, he lost the membership of the Adi Dravida Hindu caste. The Christian religion does not recognise any caste classifications. All Christians are treated as equals and there is no distinction between one Christian and another of the type that is recognised between members of different castes belonging to Hindu religion.In fact, caste system prevails only amongst Hindus or possibly in some religions closely allied to the Hindu religion like Sikhism. Christianity is prevalent not only in India, but almost all over the world and nowhere does Christianity recognise caste division. The tenets of Christianity militate against persons professing Christian faith being divided or discriminated on the basis of any such classification as the caste system. It must, therefore, be held that, when the appellant got converted to Christianity in 1949, he ceased to belong to the Adi Dravida caste."

Agreeing with the findings of the High Court their Lordships held that on conversion to christianity appellant ceased to belong to Adi Dravida caste and consequently the burden lay on the appellant to establish that on reverting to the Hindu religion by professing it again, he also became once again a member of the Adi Dravida Hindu Caste. Based on the decisions of the various High Courts, Their Lordships held:

"21.Almost all these cases laid down the principle that, on reconversion to Hinduism, a person can become a member of the same caste in which he was born and to which he belonged before having been converted to another religion. The main basis of the decisions is that, if the members of the caste accept the reconversion of a person as a member, it should be held that he does become a member of that caste, even though he may have lost membership of that caste on conversion to another religion. In the present case, we do not consider it necessary to express any opinion on the general question whether, if a person is born in a particular caste and is converted to another religion as a result of which he loses the membership of that caste, he can again become a member of that caste on reconversion to Hinduism. That is a question which may have to be decided in any of the appeals that may be brought to this Court from the judgments of the Andhra Pradesh and the Madras High Courts referred to above. So far as the present case is concerned, we consider that, even if it be assumed that a reconvert can resume the membership of his previous caste the facts established in the present case do not show that the appellant succeeded in doing so. All these cases proceed on the basis that in order to resume membership of his previous caste, the person must be reconverted to the Hindu religion and must also be accepted by the caste in general as a member after reconversion. We do not think it necessary to refer.

to specific sentences :Where these principles have been relied upon in these various judgments. It is, in our opinion,enough to take notice of the decision in Durga Prasada Rao, ILR(1940) Mad 653= (AIR 1940 Mad513) (supra), where these two aspects were emphasised by a Full Bench of the Madras High Court. In that case, the first question that arose was whether a person could become a convert to Hinduism without going through a formal ceremony of, purification. It was held that no proof of any particular ceremonial having been observed was required. Varadachariar, J., held that when on the facts it appears that a man did change his religion and was accepted by his co-religionists as having changed his religion, and lived, died and was cremated in that religion the absence of some formality should not negative what is an actual fact. Considering the question of entry into the caste, Krishnaswami Ayyangar, J., held that, in matters affecting the well-being or composition of a caste, the caste itself is the supreme judge. It was on this principle that a reconvert to Hinduism could become a member of the caste, if the caste itself as the supreme judge accepted him as a full member of it. In the appeal before us, we find that the appellant has not given evidence to satisfy these requirements in order to establish that he did become a member of Adi Dravida Hindu Caste by the time of general elections in 1967."

The appeal filed by Rajagopal was dismissed.

18. In the next general election conducted Rajagopal. again submitted the nomination paper claiming to be Adi Dravida Hindu and therefore qualified to stand for election to a Constituency reserved for Scheduled Caste. Arumugam raised objection that Rajagopal is not qualified to stand for election in a Constituency reserved for Scheduled Caste. The objection was accepted and the nomination paper was rejected. In the election Armugam was declared elected. Rajagopal challenged the election before the High Court contending that his nomination paper was improperly rejected. The High Court finding that reconversion to Hinduism does not require any formal ceremony or rituals or expiatory ceremonies, that reconvert to Hinduism can revert to his original Hindu caste on acceptance by the members of that caste and that the quantum and degree of proof of acceptance depends on the facts and circumstances of each case. It was held that according to established customs prevalent in the community Rajagopal was accepted into their fold by members of the Adi Dravida caste and at the material time he was an Adi Dravida professing Hindu religion and therefore the rejection of his nomination paper was improper and consequently invalidated the election of Arumugam. It was challenged before the Supreme Court. The Constitution Bench of the Supreme Court in C.M. Arumugam's case (supra) held that in view of the earlier finding which was accepted before the High Court by Arumugam, it cannot be disputed that Rajagopal was converted to Hinduism and at the time of submission of the nomination paper, he was a Hindu. It was found that the question whether on conversion to Christianity, Rajagopal ceased to be a member of the Adi Dravida caste, is a mixed question of fact and concession made by the party on such a question at the stage of argument before the High Court cannot preclude the party from reagitating it in the appeal before the Supreme Court. It was held that Rajagopal embraced christianity in 1949 and he ceased to be a member of Adi Dravida. He was reconverted into Hinduism. But the findings in the earlier case that Rajagopal was not accepted by the community is not conclusive in the subsequent election petition, as the earlier decision was based on the evidence let in therein and the election petition has to be decided based on the evidence therein. The Constitution Bench held :—

"17. These cases show that the consistent view taken in this country from the time Administrator-General of Madras v. Anandachari, (1886) ILR . 9 Mad 466 (supra) was decided, that is, since 1886, has been that on reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. There is no reason either therein on principle or on authority which should compel us to disregard this view which has prevailed almost a century and lay down a different rule on the subject. If a person who has embraced another religion can be reconverted to Hinduism, there is no rational principle why he should not be able come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course the community is willing to take him within the fold. It is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalistic outlook and status-oriented approach which attaches social and economic disabilities to a person belonging to a Scheduled Caste and that is why certain favoured treatment is given to him by the Constitution .Once such a person ceases to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a Scheduled Caste. But when he is reconverted to Hinduism, the social and economic disabilities once again revive and become attached to him because these are disabilities inflicted by Hinduism. A Mahar or a Koli or a Mala would not be recognised as anything but a Mahar or a Koli or a Mala after reconversion to Hinduism and he would suffer from the same social and economic disabilities from which he suffered before he was converted to another religion. It is, therefore, obvious that the

object and purpose of the Constitution (Scheduled Castes) Order, 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism, a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion. We accordingly agree with the view taken by the High Court that on reconversion to Hinduism, the 1st respondent could once again revert to his original Adi Dravida Caste if he was accepted as such by the other members of the caste.

Their Lordships thereafter considered the question whether Rajagopal was accepted as a member of Adi Dravida after his reconversion. On the facts, it was found that he was treated as a member of Adi Dravida and was never disowned by the members of that caste and members of that community. They always regarded him as an Adi Dravida belonging to their fold and the Scheduled Caste Conference held on 11-8-1968 attended largely by Adi Dravida Hindus with the object of readmitting first respondent into the fold of Adi Dravida Caste and not only was a purificatory ceremony performed at the conference with a view to clearing the doubt which had been-cast on his membership of the Adi Dravida Caste by the earlier decisions of the Apex Court. It was therefore held that after reconversion into Hinduism Rajagopal was recognised and accepted as a member of the Adi Dravida Caste by the other members of that community and therefore the finding that he belonged to an Adi Dravida Caste so as to fall within the category of Scheduled Castes under paragraph 2 of the Constitution (Scheduled Castes) Order, 1950 is correct. The appeal was dismissed.

19. Another Constitution Bench of the Apex Court in The Principal, Guntur Medical College v. Y. Mohan Rao (AIR 1976 SC 1904) considered the question whether a person whose parents belong to a scheduled caste before their conversion to christianity can on reconversion to Hinduism be regarded as a member of the scheduled caste. Analysing the earlier decision in Arumugam' s case (supra) holding that the consistent view taken in the country since 1886 on reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion if the members of the caste accept him as a member, it was held :

> "7. The reasoning on this decision proceeded which is equally applicable in a case where the parents person converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism, the members of the caste to which the parents belonged prior to their conversion accept him as a member within the fold. It is for the members of the caste decide whether or not to admit a person within the caste. Since the caste is a social combination persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel and existing member. The only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste, for, as pointed out by Krishnaswami Ayyangar J. in Durgaprasada Rao V. Sudarsanaswami, AIR 1940 Mad, 513 " in matters affecting the well being or composition of a caste, the caste itself is the supreme judge" (emphasis supplied). It will, therefore, be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically, or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold."

It was found that in such circumstances the question is whether on the material on record, it could be said to have been established by the respondent that on conversion to Hinduism he was accepted as a member of Madiga caste by the other members of that caste for, it is only if he was so accepted that he could claim to be a member of a Scheduled caste. Their Lordship held that as the State has agreed that the admission of the respondent in Madiga Caste will not be disturbed it was not necessary to decide the question in that case.

20. Later a three Judge Bench of the Apex Court considered the same question in Anbalagan's case (supra) (AIR 1984 SC 411). After analysing all the previous decisions their Lordships held:—

> "13. These precedents, particularly those from South India, clearly establish that no particular ceremony is prescribed for reconversion to Hinduism of a person who had earlier embraced another religion. Unless the practice of the caste makes it necessary, no expiatory rites need be performed and, ordinarily, he regains his caste unless the community does not accept him. In fact, it may not be accurate to say that he regains his caste; it may be more accurate to say that he never lost his caste in the first instance when he embraced another religion. The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deep rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, it disappears only to reappear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion. In Andhra Pradesh and in Tamil Nadu, there are several thousands of Christian families whose forefathers became Christians and who, though they profess the Christian religion, nonetheless observe the practice of Caste. There are Christian Reddies, Christian Kammas, Christian Nadars, Christian Adi-Andhras, Christian Adi Dravidas and so on. The practice of their caste is so rigorous that there are

intermarriages with Hindus of the same caste but not with Christians of another caste. Now, if such a Christian becomes a Hindu, surely he will revert to his original caste, if he had lost it at all. In fact this process goes on continuously in India and generation by generation lost sheep appear to return to the castefold and are once again assimilated in that fold. This appears to be particularly so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity. We do not think that any different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion."

Again the question was considered in **Kailash Sonkar** v. Maya Devi (AIR 1984 SC 600) by another three Judge Bench. Their Lordship considered the defect of emphasising on the acceptance of the community on reconversion and its dangers. It was held:

"17. In our opinion, there is one aspect which does not appear to have been dealt with by any of the cases discussed by us. Suppose, A. a member of the scheduled caste is converted to Christianity and marries Christian girl and a daughter is born to him who, according to the tenets of Christian religion, is baptised and educated. After she has attained the age of discretion she decides of her own volition to re-embrace Hinduism, should in such a case revival of the caste depend on the views of the members of the community of the caste concerned or would it automatically revive on her reconversion if the same is genuine and followed by the necessary rites and ceremonies? In other words is it not open for B (the daughter) to say that because she was born of Christian parents their religion cannot be thrust on her when after attaining the age of discretion and gaining some knowledge of the world affairs, she decides to revert to her old religion. It was not her fault that she was born of Christian parents and baptised at a time when she was still a minor and knew nothing about the religion. Therefore, should the revival of the caste depend on the whim or will of the members of the community of her original caste or she would lose her caste for ever merely because fortunately or unfortunately she was born in a Christian family? With due respect, our confirmed opinion is that although the views of the members of the community would be an important factor, their views should not be allowed to a complete loss of the caste to which B belonged. Indeed, if too much stress is laid on the views of the members of the community the same may lead to dangerous exploitation."

On consideration of the authorities the principles enunciated were summarised as follows:—

"26. It is true that a caste to which a Hindu belongs is essentially determined by birth and if a Hindu is converted to Christianity or any other religion which does not recognise caste, the conversion amounts to a loss of the said caste.

27. The question that arises for consideration is whether the loss of the caste is absolute irrevocable so as not to revive under any circumstance? In considering this question the courts have gone into the history of the caste system and have formulated the following guiding principles to determine this question:

(a) Where a person belonging to a scheduled caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is liberal enough to permit the convertee to retain his caste or the family laws by which he was originally governed. There are a number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retain their caste or family laws and despite the new Order they were permitted to be governed by their old laws. But this can happen only if the new religion is liberal and tolerant enough to permit such a course of action. Where the new religion, however, does not at all accept or believe in the caste system, the loss of the caste would be final and complete. In a large area of South and some of the North Eastern States it is not unusual to find persons converted to Christianity retaining their original caste without violating the tenets of the new Order which is done as a matter of common practice existing from times immemorial. In such a category of cases, it is obvious that even if a person abjures his old religion and is converted to a new one, there is no loss of caste. Moreover, it is a common feature of many converts to a new religion to believe or have faith to in the Saints belonging to other religions. For instance, a number of Hindus have faith in the Muslim Saints, Dargahs, Imambadas which becomes part of the their lives and some Hindus even adopt Muslim names after the Saints but this does not mean that they have discarded their old Order and got themselves converted to Islam.

(b) In all other cases, conversion to Christianity or Islam or any other religion which does not accept the caste system and insists on relinquishing the caste, there is a loss of caste on conversion."

The question whether after a person is converted to a new religion, in that case to christianity, does his caste revive if he is reconverted to old religion and if so, under what circumstances was answered as follows:

"starting from the Privy Council to the present day, authorities of the High Courts and this Court have laid down certain norms and conditions under which a caste could revive. These conditions are as follows:

(1) where the convertee exhibits by his actions and behaviour his clear intention of abjuring the new religion on his own volition without any persuasion and is not motivated by any benefits or gain.

(2) where the community of the old order to which the convertee originally belonged is gracious enough to admit him to the original caste either expressly or by necessary intendment, and

(3) Rules of the new Order in permitting the convertee to join the new caste"

It was therefore held:—

"Unless the aforesaid conditions are fulfilled the loss of caste on conversion is complete and cannot be revived."

The main test to be applied was laid as follows:—

"the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste. In order to judge this factor, it is not necessary that there should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste and it would be sufficient compliance of this condition if no exception or protest is lodged by the community members, in which case the caste would revive on the reconversion of the person to his old religion."

It was held that one must not forget that when a child is born neither has he any religion nor is he capable of choosing one until he reaches the age of discretion and acquires proper understanding of the situation. Hence the mere fact that the parents of a child who were christians would in ordinary course get the usual baptism certificate and perform other ceremonies without the child knowing what is being done but after the child has grown up and becomes fully mature and able to decide his future, he ought not to be bound by what his parents may have done. Therefore in such cases it is the intention of the convert which would determine the revival of the caste. If by his clear and conclusive conduct the person converts to his old faith and abjures the new religion in unequivocal terms, his caste automatically revives. Their Lordships held :—

"32. Another dominant factor to determine the revival of the caste of a convert from Christianity to his old religion would be that in cases of election to the State Assemblies or the Parliament where under the Presidential Order a particular constituency is reserved for a member of the scheduled caste or tribe and the electorate gives a majority verdict in his favour, then this would be doubtless proof positive of the fact that his community has accepted him back to his old fold and this would result in a revival of the original caste to which the said candidate belonged."

Though their Lordships expressed the opinion that when a person is converted to christianity or some other religion the original caste remains under eclipse and as soon as during his/her lifetime the person is reconverted to the original religion the eclipse disappears and the caste automatically revives and whether or not the revival of the caste depends on the will and discretion of the members of the community of the caste was left open to be decided. It was observed that in normal circumstance the caste would revive by applying the principles of doctrine of eclipse to the revival of a caste. Adding a rider that where it appears that the person reconverted to the old religion had been converted to christianity since several generations it may be difficult to apply the doctrine of eclipse to the revival of caste.

21. In view of the Constitution Bench decisions, it can only be found that a member of Hindu Scheduled Caste on conversion to Christianity would loss his status as a member of scheduled caste unless there is evidence to prove that the Cheramar or Pulayan caste comprise both Hindus and Christians. Ordinarily whenever a member of the caste converts from Hinduism to Christianity, he loses his membership of the caste. On his reconversion, he could regain the status as a member of the scheduled caste, only if members of that community accept him to their fold as one of the members of that caste. It is not the intention of the person who is reconverted which matters, but how he was treated by the earlier community subsequent to reconversion. Whatever be the desire and the intention of the person so reconverted, if the community does not accept him as a member of their fold, on such reconversion he cannot claim the status as a member of that caste which he lost by conversion. On the other hand, if the members of the erstwhile caste accept him as a member of their caste, he would continue to be a member of the scheduled caste which he originally was.

22. These principles applies to the case of the respondent being the son of the parents who were originally Hindus and later converted to Christianity and he was born subsequent to their conversion. The fact that he was baptised and was admitted to the school as a Christian and was taken to the Church are not conclusive facts to decide as he was baptised at a time when he was a minor and knew nothing about the religion. So also fact that he was admitted in the school showing him as a member of christian community will not be a binding fact to decide the question, as the religion of the parents cannot be thrust on him. After attaining the age of discretion and gaining knowledge of the worldly affairs, he is entitled to decide to revert to the old religion or not. But in that case there should be a

genuine intention to abjure christianity and completely dissociate himself from that religion. The reversion to Hinduism cannot be a ruse or pretext or a cover to gain "mundane worldly benefits" making a reversion only a show to achieve gain available to that caste.

23. It is the case of the petitioners that respondent is not a Hindu and even if a Hindu by conversion, he is not a scheduled caste. Their case is that his father is Joseph and his mother, brothers and sisters are all Christians and his name was J. Monian. Respondent contended that his father was not Joseph but Kunjan. According to respondent, his father was illiterate and due to ill health he could only do menial work and the family was eking out the livelihood by the seasonal agricultural work and the Christian Missionaries extended help and hence he visited the Christian Missionaries to avail the help extended and in the course of time Christian Missionaries started calling him by name Joseph and thus he was also known as Joseph but he continued to be Kunjan a Hindu. As RW1 the respondent contended that his father never desired to break the social ties with the members of the caste and he continued to be a Hindu and the conversion was only nominal as they continued to worship in Devi and Dharmasastha in their house and their parents used to take the children to the temples for worship and the parents never professed Christianity. Evidently the contention about the nominal conversion was raised based on the decision of the Supreme Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram (AIR 1954 SC 236). Their Lordships held that conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of family and social ties and the casting off or retention of old customs and observances. The three factors to be considered are:

> "(1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. Only of the old order is tolerant of the new faith and sees no reason to outcaste or ex-communicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is nominal".

It was held that if there is no readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order.

24.While considering this aspect the reactions of the old body and the rules of the new order should necessarily be considered. As held by the Supreme Court in the various decisions referred to earlier, christianity does not approve any caste system and on conversion to christianity, the convert cannot claim that he continues to be a member of the old caste. Only if the new religion accept or believe the caste system, the convert will not loss the caste. When the new religion does not at all accept or believe in the caste system, the loss of the caste would be final and complete. There cannot be a nominal conversion from Hindu Cheramar or Pulayan caste to Christianity as canvassed by the learned senior counsel appearing for the respondent.True, if there is evidence to prove that Christianity permits the convert to continue as a scheduled caste and the old order namely the scheduled caste permits him to continue as a member of the scheduled caste, even after such conversion the position would be different. It is also true that precedents from South India establish that even after conversion to Christianity, the old caste continued in certain regions like in Andhra Pradesh. But there is no precedent or evidence to hold that a Hindu Pulaya or Cheramar even after conversion to Christianity would retain the old caste. Therefore the contention raised by the respondent that conversion of the respondent to Christianity was nominal and the parents continued to be member of scheduled caste can only be rejected.

25. The facts and the evidence in the case has to be appreciated in background of the settled legal position. Petitioner in E. P. 3/2009 was examined as PW 1. Petitioner in E. P. 8/2009 was examined as PW2. Petitioner in E.P.7/2009 was not examined. Instead the Chief Election Agent of the election petitioner who is the District Secretary of his party was examined as PW3. The then Tahsildar, Nedumangad who issued Ext.X1(a) caste certificate, produced before the Returning Officer along with the nomination paper to the effect that respondent belongs to Hindu Cheramar caste, was examined as PW4. The Headmistress of Ayiroorpara Government Higher Secondary School where the respondent studied from Standard VIII to X was examined PW5 to prove Ext. P9, the admission register extract of the respondent to show that respondent was admitted there as son of Joseph showing his religion as Christian Cheramar. The Headmaster of Lakshmi Vilasom Aided High School, Pothencode was examined as PW6, to prove Ext.P10 admission register extract of the respondent, where he studied from Standard VIII to X. The Returning Officer of the Mavelikkara Parliamentary Constituency, the then District Collector, Alappuzha, was examined as then PW7. Then then Tahsildar, Kottarakkara who issued Ext. P1 caste certificate to the respondent, on Ext.X3(a) application submitted by him claiming that he belongs to Hindu Pulaya Caste, was examined as PW8. The Village Officer, Vembayam who submitted the report based on which Tahsildar, Nedumangad issued the caste certificate was examined as PW9. Village Officer, Kottarakkara on whose report the Tahsildar, Kottarakkara issued caste certificate was examined as PW10. The Principal of Government Law College where respondent studied for law was examined as RW2 to prove Ext.R6 the admission register extract. The President of Kerala Hindu Mission, a practising Advocate of Thiruvananthapuram Bar was examined as RW3 to prove Ext.R10, the conversion certificate issued by Kerala Hindu Mission to show that respondent was converted to Hinduism. A voter of Adoor Parliamentary Constituency

who was the Headmaster of a Kulathupuzha Government High School was examined as RW4 to prove the claim that respondent was accepted as a member of the scheduled caste. The State General Secretary of Kerala Pulayar Maha Sabha was examined as RW5 to prove that respondent is a member of Kerala Pulaya Mahasabha an organization of pulaya caste. RW6 a schoolmate of the respondent was examined to prove that he is not a Christian but a Hindu belonged to scheduled caste. RW7 was examined to prove that Ext.R17 and R19 certificates issued to the respondent that he is a member of Kerala Cheramar Sangham.

26. It is admitted case that respondent was admitted in school showing the name of his father as Joseph and belonging to Christian religion, though it was shown Chriatian Cheramar. Ext P9 the school admission register of Government High School Ayiroorpara was proved through PW 5 the Headmistress. Ext.P9 shows that respondent was admitted in that school on, 7-6-1967 in Standard I. His name was then J. Monian and the religion Christian Cheramar and it is shown he is a scheduled caste. It also shows that he studied there till Standard VII. Ext. P10 the admission register of LVHS, Pothencode proved, through the evidence of PW6 the headmaster, that respondent was thereafter admitted to Standard VIII LVHS, Pothencode on 5-5-1975 and he was given the transfer certificate on 28-2-1978 in Standard X. His name in the admission register is shown as J.Monian. Instead of the name of the father, name of mother Thankamma is shown. The religion is shown as Christian Cheramar and as scheduled caste. Ext.R2 is the SSLC book issued to the respondent which shows that he passed SSLC in March 1978. The name of the respondent is shown as Monian, J. The name of the mother is shown as Thankamma.T and religion Christian and caste Cheramar. Respondent after completing graduation joined Law College, Thiruvananthapuram. The evidence of RW2 with Ext. R5 establish that he was admitted in the Law College on 9-10-1984 as Suresh, J. with the mother Thankamma as the guardian. The religion and caste are shown as Hindu Cheramar as scheduled caste. According to the respondent, before joining Law College he had undergone conversion. Ext. R10 the conversion certificate issued by Kerala Hindu Mission is pressed into service to establish that fact. Ext.R10 shows that on 25-5-1978 respondent who was till then a Christian Cheramar aged 16 and called Monian, J. was converted to Hinduism in the name Suresh J. after performing the ceremony in Kanjirampara Sree Krishna Temple. According to respondent, it was felt necessary to convert Hinduism as there was a nominal conversion of the parents to Christianity.

27. On the evidence, it cannot be disputed that respondent was born to converted Christian parents. In fact this was not seriously disputed. The argument advanced by the learned senior counsel is that the fact that parents are converted to Christianity cannot be a reason to thrust that religion on the children and the brothers and sisters of the respondent were also converted to Hinduism. Learned senior counsel appearing for the petitioners and the other counsel appearing for the other petitioners challenged the conversion on several grounds. It was argued that even if it is accepted that religion of converted parents cannot be thrust upon their children and after the age of discretion they have a right to revert back to the old religion of the parents, there was no reconversion by the respondent on attaining majority. It was pointed out that as is clear from Ext. R 10 and the date of birth of the respondent on 25-5-1978, when he was allegedly converted into Hinduism he was aged only 16 years and therefore he was a minor. It was argued that when respondent was a minor at the time of the alleged conversion, he is not legally entitled to convert to Hinduism, as under the Indian Majority Act, respondent has to complete the age of 18 to act of his own and in law the conversion is invalid. It was also pointed out that Ext. R9 the Gazette Notification published on 21-11-1978 after Ext. R 10 conversion on 25-5-1978 is also invalid as it was issued by the brother of the respondent as guardian, at a time when the mother is alive and therefore Suseelan the elder brother is incompetent to act as a guardian. Ext. R9 Notification reads :—

> "It is notified for the information all of concerned authorities and public that I, K. Suseelan Kundeathu Muthal Puthuval Puthenveedu, Theepukal, Vembayam Pothencode P.O. have changed the religion of my minor brother Sri.J.Monain holder of S.S.L.C. Book No. 618334 of S.S.L.C. Reg. No. 321426 of 1978 March, from Christianity to Hinduism vide Certificate No. 107365 dated 25-5-1978, Kerala Hindu Mission, Trivandrum and also changed the name as J. Suresh. This change will effect all records related to him from the date of this Notification."

That Notification is dated 1-6-1978, though it was published in the Gazette on 21-11-1978. The first question is whether any particular ceremony is to be performed for conversion and if not whether Ext. R9 and R10 would legally be treated as a conversion. As declared by the Apex Court in Anbalagan's case (supra), no particular ceremony is prescribed for reconversion into Hinduism of a person who had earlier embraced another religion. Unless the practice of the caste makes it necessary, no expiatory rites need be performed and ordinarily, he regains his caste if the community accept him. When a Hindu pulaya or a cheramar converts to christianity and later reconverts into Hinduism, no expiatory ceremony is to be performed for reconversion to Hinduism. It is also true that the caste of the parents of the respondent cannot be thrust upon for the reason that he was born to the parents when originally parents were Hindus and were subsequently converted to Christianity. The choice is that of the children to decide whether they have to accept the religion of the parents or have to convert to the original religion of the parents. It is also true that the decision is to be taken by the children, after they attain the age of discretion. The fact that till then the children were brought up as Christians and were

baptised or admitted in the school and studied in the school as christians are not binding facts on the children as they cannot amount to curtailing the right available to the children to opt for the original religion of their parents on attaining the age of discretion.

28. Unfortunately for the respondent in this case, after the respondent attained the age of discretion he did not undergo a conversion ceremony or made any publication that he opts to live as Hindu by reverting back to the original religion of their parents. In law Ext. R9 conversion and Ext. R10 publication cannot be held to be valid for more than one reason. When Ext. R10 conversion was made, respondent was only aged 16 years. Therefore he cannot at that time legally decide whether he is to continue as a Christian or has to revert back to the original religion of father. He is incompetent in law to enter any contract at that age. Therefore Ext. R10 conversion is not legal or valid. Similarly when Ext. R9 Notification was published, respondent was only 16 years. When the mother of the respondent was admittedly alive, though the father was no more, at that time only the mother could act as his guardian. Suseelan the brother is incompetent to act on behalf of the respondent minor brother and make a publication that respondent was converted to Hinduism from Christianity. But even then the question is for the reason that Exts. R9 and R10 are void, can it be said that respondent is not entitled to profess and live as a Hindu.

29. Evidence establish that till 25-5-1978 respondent was shown as Monian, J. and name of his father as Joseph. There is force in the submission of the learned senior counsel appearing for the the petitioner that even after name of the respondent was changed to Suresh, the initial J. continued denoting the name of his father Joseph. It was subsequent to 1-6-1978 respondent was admitted in Law College as a Hindu Cheramar and completed LL. B degree course in the name Suresh, J. proclaiming his religion as Hindu. Respondent admittedly contested the election to Adoor Parliamentary Constituency and got elected and represented that Constituency for four terms. Entries in Ext .R4 (a) Legal and Constitutional Digest, Lok Sabha election Special Issue 2004 published by the Legislature Library Secretariat of the Kerala Legislature, Thiruvananthapuram show the details of the Parliamentary elections for Adoor reserved Constituency. In 1971, it was K. Bhargavi Thankappan, a member of Communist Party of India who was declared elected. In 1989 it was the respondent who was elected as the candidate of Indian National Congress defeating Sri. K. Rajan a member of the Communist Party of India. In 1991 also respondent was elected defeating Bhargavi Thankappan a member of Communist Party of India who was earlier elected in 1971. In 1996 also respondent was elected. He defeated P.K. Raghavan a member of Communist Party of India. The evidence of PW3 establish that the election petitioner in E.P.7/2009, who is the defeated candidate in the present election, is the son of said P.K. Raghavan. It is also admitted by PW 3 that P.K. Raghavan was a Minister for Scheduled Caste and Scheduled Tribe and also Registration, during 1987-91. In 1998, Sri Chengara Surendran, a member of Communist Party of India was the successful candidate. He defeated the respondent by majority of 17005 votes at that time. In 1999 election respondent was again elected defeating the same Chengara Surendran by a majority of 22,006 votes. It is admitted case that subsequently Adoor Parliamentary Constituency was made a general seat and Mavelikkara Parliamentary Constituency was made the Constituency reserved for Scheduled Caste instead of Adoor. The argument of the learned senior counsel appearing for the respondent is that respondent joined in Law College as a Hindu Cheramar and completed the LL. B course as a Hindu Cheramar and thereafter has been living as a Hindu Cheramar professing to be a Hindu and contesting Parliamentary Election as a Hindu Cheramar. Eventhough the father of the defeated candidate in the election was a candidate for the Parliamentary Constituency against the respondent in 1996, inspite of the fact that he was a leader of the Scheduled Caste and was a Minister of the State of Kerala for Scheduled Caste and Scheduled Tribe, he did not challenge the election of the respondent on the ground that he is not a Hindu or a Scheduled Caste and in such circumstances is it clear that respondent was recognised by the Hindu Cheramar Community that he is a Hindu Cheramar and therefore is not disqualified to contest the election for Mavelikkara Constituency, reserved for Scheduled Caste.

30. Though it was contended by the petitioners that respondent had earlier contested the election as a Hindu Pulaya and not as Hindu Cheramar, it is the case of the respondent that he had contested all the earlier elections as a member of Hindu Cheramar caste. Ext. R 8 to R8(b) are the copies of the caste certificates produced by the respondent in the earlier elections. Ext. R8 is a certificate issued by the Tahsildar, Nedumangad on 27-10-1987 to the respondent stating that the respondent son of Kunjan belongs to Cheramar Hindu Caste. Ext. R8(a) certificate dated 22-4-1991 was issued by the Tahsildar, Nedumangad to the same effect. Ext. R8(b) certificate issued dated 22-7-1999 also shows that respondent was certified by the Thsildar as belongs to Hindu Cheramar Community which is recognised as a Scheduled Caste. Ext. P2 is the caste certificate produced by the respondent along with the nomination paper. Ext. X1 is the file relating to the issuance of that certificate. PW 4 was the then Taluk Tahsildar who issued the certificate. The evidence of PW4 with Ext. X1 file shows that Ext. X1(a) application was filed by the respondent, to issue the said caste certificate. That application was filed before the Tahsildar, Nedumangad dated 7-3-2009 Respondent claims therein that he is a Hindu and belongs to Cheramar caste and he intends to submit his nomination paper to the election for Mavelikkara Reserved Constituency on 16-4-2009 and therefore the certificate is to be issued. The evidence of PW4 shows that on receipt of the application he called for a report from

as provided under that Act. Therefore the caste certificate issued by the Tahsildars cannot be held to be valueless, for non compliance with the provisions or the procedure provided under the Kerala Act 11 of 1996.

32. The argument of the learned senior counsel appearing for the petitioners is that respondent by his own conduct showed that he is not a Hindu Cheramar as he has submitted Ext. X3(a) application before the Tahisldar, Kottarakkar claiming that he is a Hindu Pulaya. The argument is that as per the Constitution (Scheduled Caste Order) 1950, Pulaya and Cheramar are different castes and therefore respondent cannot be a Pulayan as well as Cheramar as both are different and distinct castes.

33. Entry 54 of Part VIII of the Constitution (Scheduled Castes) Order, 1950 after its amendment by Act 61 of 2002 reads :—

"Pulayan, Cheramar,
Pulaya, Pulayar,
Cherama, Cheraman,
Wayanad Pulayan,
Wayanadan Pulayan,
Matha, Matha Pulayan."

Before the amending Act 61 of 2002 Entry 54 reads :—

"Pulayan, Cheramar,
Pulaya."

The argument of the learned senior counsel is that when Pulayan and Cheramar are distinct and separate caste, respondent cannot claim to be a Cheramar as well as Pulayan at the same time. It was pointed out that respondent has claimed to be a Cheramar and Pulaya at the same time and it belies the contention that he is a member of Scheduled Caste. The Secretary of Kerala Pulayar Maha Sabha was examined by the respondent as RW5. It was pointed out in cross examination of RW5 that there has been a split in Kerala Pulayar Maha Sabha and when RW5 claims that the President and his followers were ousted by his faction, the President and his followers claim that RW5 and others were ousted. RW5 was examined to prove that respondent was accepted by the community as a member of the Pulaya Community and hence he is a Scheduled Caste. Respondent contended that Cheramar and Pulaya is one and the same caste though known in different names and therefore the fact that respondent claim to be Cheramar and Pulaya does not make any difference. It was also pointed out that all the educational records of the respondent show that he belongs to Cheramar Caste and subsequent to his conversion when he joined the Law Collage he was shown as Hindu Cheramar and he continued to be a Hindu Cheramar and evidence of RW7 with Exts. R17 and 19 establish that he was accepted as a member of Hindu Cheramar caste by the members of that caste. Exts. R17 is the certificate dated 25-10-1979 issued by the President Keralas Cheramar Sangam an organization of Cheramar caste. The certificate is to the effect that respondent who embraced Hinduism and admitted to Hindu Vedic Dharma after the performance of Sudhi by Kerala Hindu Mission on 25-5-1978 and known by name Suresh being a descendant of Scheduled Caste convert and by conversion he is thereby accepted and admitted into fold of Hindu Cheramar community by its members who are Cheramar Hindu and by this fact he become a member of Cheramar community, which is recognised as Scheduled Caste. It is seen issued by S. Rajaretnam who was the then President. Ext. R19 is another certificate issued by the same Rajaretnam of Kerala Cheramar Sangam on 30-8-1983 to the effect that Suseelan, the brother of the respondent who was originally by name J. Njanaseelan had converted into Hinduism by performance of Sudhi according to Kerala Hindu Mission by certificate dated 7-5-1973 is accepted and admitted into fold of Hindu Cheramar Community by its members who are Cheramar Community and by that fact he has become a member of Cheramar community which is recognised as a Scheduled Caste. Evidence of RW7 a retired Engineer from ISRO shows that during 1972-80 he was the Secretary of Thiruvananthapuram District Committee of Kerala Cheramar Sangham and the Head Office of the Sangham was fuctioning at the house of its President Rajaretnam and as Secretary he received communications from President and he could thereby identify the signature seen in Exts. R17 and R19 as that of the then President. In cross examination the witness deposed that his father was the Secretary of the Kerala Cheramar Sangham at the time when Rajaretnam was President and since 1980, he has no connection with Kerala Cheramar Sangham. It is also admitted by the witness that Ext. R17will not show that respondent was a member of Kerala Cheramar Sangham. Though he deposed that his father was the Secretary till 1980 he deposed that from 1979-80 onwards his father had disassociated with the organization. When RW7 was asked whether the Sangham was not extracting money for issuing certificates, he deposed that the President had received funds and donations for issuing certificates and from 1980 onwards the Sangham was defunct. The evidence of RW7 establish that no credence could be attached to Ext. R17 and R18 to show that respondent was accepted as a member of Hindu Cheramar caste. On the other hand, if the evidence of RW5 is to be accepted, respondent could only be a member of Pulaya Caste and not Cheramar Caste. Though RW5 claimed that both are the same caste, it is difficult to accept the said evidence in the light of the admitted facts. Though evidence of RW5 was relied upon to prove that respondent was accepted by the members of Hindu Pulaya Caste, as rightly argued by the learned counsel appearing for the petitioners the evidence of RW5 does not establish that fact. If the evidence of RW5 is to be believed, respondent is a member of Kerala Pulaya Mahashaba. But respondent has no such case when he was examined. The evidence of RW5 is that Kerala Pulaya Mahasabha had conducted a public rally in Ernakulam and in that rally respondent had participated. The argument is that it is proved that respondent was accepted by the members of the Pulaya Community. As rightly pointed out by the learned counsel appearing for the petitioners the evidence of RW5 with the news item published in the newspapers show that, as

Village Officer Vembayam. Ext X1 file shows that along with the application respondent submitted copy of the conversion certificate issued by Karala Hindu Mission as well as the Gazette Notification dated 21-11-1978. Ext. X1(b) is the report submitted by the Village Officer, Vembayam. It is dated 11-3-2009. It shows that the father of the respondent is Kunjan Hindu Cheramar, mother Thankamma a Hindu Cheramar and wife Bindu Hindu Cheramar. Respondent and his father were born and brought up as permanent residents of Vembayam Village and they belong to Hindu Cheramar caste and therefore Tahsildar can issue the certificate to that effect. Ext X1(c) (It is the same as Ext. P2) caste certificate was therefore issued on 12-3-2009 to the effect that respondent belongs to Hindu Cheramar caste which is recognised as a Scheduled Caste under the Constitution (Scheduled Castes) Order, 1950 and he ordinarily resides in Vembayam village of Nedumangad Taluk. It also shows that the certificate issued for the purpose of submitting the nomination paper of the respondent to the election. The evidence of PW4 establish that Ext. X1(a) application was received on 7-3-2009 and it was sent to the Village Officer Vembayam and Ext. X1 (b) report submitted by PW 9 the Village Officer, Vembayam dated 11-3-2009 was received at the Taluk Office on 12-3-2009 and Ext. X1 (c) certificate was issued on the same day and Ext. X1(b) report did not disclose the details of the inquiry made by the Village Officer.

31. Ext. X3 is the file maintained in the Taluk Office, Kottarakkara relating to the issuance of Ext. P1 caste certificate by the Tasildar, Kottarakkara. Evidence of PW8 Tahsildar, Kottarakkara with the evidence of PW 10, the then Village Officer, Kottarakkara and Ext. X3 file establish the details regarding the issuance of that caste certificate. Ext. X3(a) application dated 4-3-2009 was submitted by the respondent to the Tahsildar, Kottarakkara seeking issuance of a caste certificate stating that he intends to contest for the Mavelikkara Reserved Constituency and he belongs to Hindu Pulaya. For submitting the caste certificate along with the nomination paper a certificate to the effect that he belongs to Hindu Pulaya is to be issued. Ext. X3(a) did not show when it was received by the Tahsildar. The endorsement shows that it was forwarded to the village office on 5-3-2005. On the reverse side of Ext. X3(a) PW10, the Village Officer, Kottarakkara submitted Ext. X3(b) report. The report is to the effect that respondent is the son of late Kunjan and Thankamma residing at Kizhakkekkaramuri, Kottarakkara and he belongs to Hindu Pulaya caste and is living as Hindu Pulaya following the practice of that community and the mother is a Hindu Pulaya and the father was also a Hindu Pulaya. That report was issued on the same day. It is seen that the report was received by the Tahsildar on the same day and he passed an order to issue a caste certificate and accordingly Ext.P1 caste certificate was issued on the same day. The evidence of PW10, the Village Officer, Kottarakkara shows that he conducted and inquiry and verified and found that respondent belongs to a Hindu Pulaya caste and he is a resident of Kottarakkara. The evidence of PW8 is that he did not conduct an independent inquiry and instead Ext. X2(b) certificate based on the report received from the Village office issued the certificate. The evidence of PW8, Village Officer, Kottarakkara and PW4 the Tahsildar, Nedumangad establish that caste certificates were issued without proper inquiry. Learned counsel appearing for the petitioners argued that while issuing the caste certificates that the respondent belong to a scheduled caste, the Tahsildar should have complied with the provisions of Kerala (Scheduled Caste/Scheduled Tribe Regulation of Issuing Community Certificate) Act, 1996 which came into force on 1-10-1996. It is pointed out that as per Act 11/1996, an application is prescribed for getting a caste certificate and an inquiry is contemplated and finally a certificate is to be issued in the proforma and the applications were not submitted in the prescribed form and no inquiry was conducted as provided under the Act and the certificate was also not issued in the prescribed form and therefore the certificates are valueless. The preamble of Kerala Scheduled Castes and Scheduled Tribes Regulation of Issuing Community Certificate) Act 11 of 1996 makes it clear that the order was issued to curb effectively the evil practices of securing certificates as members of Scheduled Castes and Scheduled Tribes in the State by those who do not belong to the Scheduled Caste or Scheduled Tribe and claim the benefits of reservation and other benefits meant for the Scheduled Castes and Scheduled Tribes. Section 3 of the Act provides that the certificate to be issued thereunder is to claim "any benefit, concession, protection, exemption or reservation provided to such castes or tribes either for any appointment in public services or for admission into educational institutions, exclusively intended for members of the Scheduled Castes or Scheduled Tribes or for contesting for the seats reserved for them in educational institution in the State or outside the State for the students of the State or local authority or co-operative institutions". Therefore the certificate to be issued under Act 11/1996 in not for the purpose of the Parliamentary or Legislative Assembly elections. Therefore the caste certificate issued by the Tahsildar, Nedumangad, or Tahsildar, Kottarakkara cannot be challenged on the ground that the application for the purpose of caste certificate was not submitted in the prescribed form or that inquiry as provided under the Act was not conducted or that the caste certificate was not issued in the prescribed form. In Sobha Hymavathi Devi v. Setti Gangadhara Swamy (2205) 2 SCC 244 Supreme Court considered the non-compliance with the provisions of the similar Act passed by the State of Andhra Pradesh and held that the said Act is not applicable to the election to a Legislative Assembly or Parliament and the court is not bound by the certificate and in exercise of the jurisdiction under the Representation of the People Act, court is not precluded from going into the status of a candidate or making an independent inquiry into that question inspite of production of a caste certificate

admitted by RW1 and RW5, in 2008 a public rally was conducted in Ernakulam by Kerala Pulayar Maha Sabha. In that rally Smt. Sonia Gandhi in her capacity as Chairperson of UPA was invited. Respondent was then the Secretary of AICC. When the Organizers of the rally decided to invite Smt. Sonia Gandhi as Chief Guest they invited respondent who has influence in the party who could make the participation of Smt. Sonia Gandhi in the rally a reality. It is in such circumstances, respondent participated in the rally. Eventhough it is claimed that respondent participated in the rally, he has not participated in the rally but only in the public meeting conducted after the rally where apart from the respondent Congress leader like Smt. Sonia Gandhi, Sri Ramesh Chennithala, the President of KPCC and Sri Oommen Chandy the Leader of the Congress Party participated. Because of the participation of these leaders, it cannot be said that they are members of the Pulaya community or that they were accepted as members of the community by their community. In such circumstances, for the reason that respondent participated in the rally, it cannot be found that he is either a member of the Pulaya community or that he was accepted by the member of the Pulaya community. Even if the case of the respondent is accepted, it would only show that he is a member of the Pulaya community as claimed in Ext. X3(a) application and not a member of Hindu Cheramar community as claimed in Ext. X1(a) application or the nomination paper.

34. Learned senior counsel appearing for the petitioner argued that in view of the Constitution Bench decision of the Apex Court respondent is not entitled to contend that Pulaya and Cheramar caste is one and the same. The Supreme Court in B. Basavalingappa v. D. Munichinnappa (AIR 1965 SC 1269) considered the question whether it is open to make any modification in the Constitution (Scheduled Caste) Order except by the Parliament and whether it would be open to give evidence that a caste which is not specified in the Constitution (Scheduled Caste) Order is a Scheduled Caste. That was a case where election to the Bangalore South (Scheduled Caste) Constituency reserved for Scheduled Caste was challenged on the ground that first respondent therein was not a member of any of the Scheduled Caste mentioned in the Constitution (Scheduled Castes) Order, 1950. First respondent claimed that he belonged to the Scheduled Caste listed as Bhovi in the Constitution (Scheduled Castes) Order while the appellant contended that he was a Voddar by caste and Voddar was not a Scheduled Caste specified in the order and consequently he is not qualified to contest the election for a Constituency reserved for Scheduled Caste. The Constitution Bench held that in view of the stringent provisions in Article 341(2) it is not open to anyone to include any caste as coming within the Notification on the basis of evidence, oral or documentary if the caste in question does not find specific mention in the terms of the Notification. But on the facts of that case Their Lordships held that it is not open to make any modification in the Order by producing evidence to show that though Caste A alone is mentioned in the order Caste B is also a part of Caste A and therefore must be deemed to be included in the caste and wherever one caste has another name it has been mentioned in the brackets after it in the order and therefore generally speaking it would not open to any person to lead evidence to establish that Caste B is part of Caste A notified in the order and therefore it would not have been open to give evidence that Voddar caste was the same as the Bhovi caste specified in the Order, for Voddar caste is not mentioned in brackets after the Bhovi caste in the order. Their Lordships then held that in Mysore State as it was before the re-organisation of 1956 there was no caste by name Bhovi and the Order refers to a Scheduled Caste known as Bhovi in Mysore State, as it was before 1956 and therefore it must be accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the Order, when the order mentions the caste Bhovi as a Scheduled Caste. It was held :—

> "It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which caste was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956 evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to be determine which was the caste which was meant by that word on its inclusion in the Order. It is this peculiar circumstance, therefore, which necessitated the taking of evidence to determine which was the caste which was meant by the word "Bhovi" used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the reorganisation of 1956."

35. The Supreme Court made it clear that the evidence was referred to only because there was undoubtedly no caste known as Bhovi in the country State as it was before 1956 and therefore it is to be found which caste was meant by the word Bhovi as used in the Order. It was held :—

> "But for this fact it would not have been open to any party to give evidence to the effect that for example Caste A mentioned in the order includes or was the same Caste B where Caste A does exist in the area to which the Order applies."

36. Again a Constitution Bench in **Bhaiya Lal v. Harikishan Singh (AIR 1965 SC 1557)** did not accept the plea of the appellant therein that although he was not a Chamar as such he could claim the same status by reason of the fact that he belong to Dohar caste which is a sub-caste of Chamar. After referring Basavalingappa's case (supra) it was held that no inquiry of that kind would be

permissible in the light of the provisions contained in Article 341 of the Constitution. It is pertinent to note that the election in that case was challenged also on the ground that he belong to Dohar Caste which was not recognised as a Scheduled Caste for the District in question and therefore his declaration that he belong to Chamar Caste which was a Scheduled Caste was improper and was illegally accepted by the Returning Officer. The contention was accepted by the Election Tribunal and the election was declared invalid and the High Court confirmed the same in appeal. The Supreme Court dismissed the appeal holding that the plea that the Dohar caste is a sub-caste of Chamar caste could not be entertained in view of the Constitution (Scheduled Castes) Order, 1950 issued by the President under Article 341 of the Constitution and in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one can only look at the public Notification issued by the President in that behalf.

37. In Dina Vithoba Naronwara v. Narayan Singh 38 ELR 212 (SC) known as Dina-I the Apex Court took the view that evidence is admissible for the purpose of showing what an entry in the Presidential Order was intended to be while stating that the entries in the Presidential Order have to to be taken as final and the scope of inquiry and admissibility of evidence is confined within the limitations indicated therein. Based on appreciation of evidence on record, it was held that Mana is a sub-tribe of Gonds and if on the evidence it is established that there is no sub-tribe of Manas among the Gonds, the arguments would have force. But on the record there is evidence which supports the case of the first respondent that there is a tribe of Manas amongst Gonds. In Dina II's case after examining the evidence, the two Judge Bench held that Mana community included in Entry 18 can only be that of which has affinity with Gonds and any other community which also bears the name Mana, but does not have any such affinity cannot be deemed to fall within the scope of Mana in Entry 18. It was also held that a Mana who was a member of the sub-tribe of Gond alone is entitled to the previleges conferred by the Schedule to the Scheduled Tribes Order. It was held that merely because the appellant belong to the Mana community amongst Marathas he is not eligible to stand as a candidate for election to the Maharashtra Legislative Assembly from the reserved seat of Armori Constituency in Gadchiroli tehsil of Chanda District as he is not a member of the sub-tribe of Gond.

38. The Constitution Bench in **State of Maharashtra v. Milind and others [(2001) 1 SCC 4)]** considered the question including the correctness of the view taken in Dina-I and Dina-II. After analysing all the previous cases, the Constitution Bench clarified the legal position as follows :—

> 36. In the light of what is stated above, the following positions emerged :
>
> 1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part or group within any tribe or tribal community is included in the general name eventhough it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.
>
> 2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.
>
> 3. A notification issued under clause (1) of Article 342, Specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.
>
> 4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the Notification issued under clause (1) of Article 342.
>
> 5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda v. Anirudh Patar and Dina v. Narain Singh did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter."

The Division Bench decision in Dina I case was expressly overruled and the decision in Dina II was impliedly overruled. The Supreme Court in State of Maharashtra & Others v. Mana Adim Jamat Mandal [2006(4) SCC 98] considered the question whether the decision in Dina II were overruled by the Constitution Bench decision in Milind's case as it was not expressely overruled. Their Lordships held :—

> "19. As noticed above, a Constitution Bench of this Court in Milind case has overruled the decision in Dina I which was bassed on appreciation of evidence on record. In Dina II not only the observations made in Dina I were bodily lifted in para 18, in para 17, as quoted above, the evidence on records was considered in arriving at the conclusion, which is not permissible.
>
> 20. We are therefore, in agreement with the view of the High Court that the decision in Dina II is overruled by the Constitution Bench in Milind case by implication."

39. Therefore in view of the Constitution Bench decisioon in Milind's case it can only be held that it is not permissible to hold any inquiry or to let in any evidence to decide or declare that any caste or community or group within any caste or community is included in the general name, eventhough it is not specifically mentioned in

concerned entry in the Constitution (Scheduled Castes) Order, 1950. It is also to be held that it is not permissible to say that a caste or sub-caste or part of or group of any caste or community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not specifically mentioned in it and it is not open even to the courts to modify or amend the list of scheduled caste specified in the Notification issued under Clause (1) of Article 342. In the light of the decision of the Constitution Bench in Milind's case, it can only be found that the decision of a learned single Judge of this court in Thevan v. Union of India & Others (1985 KLT 30) relying on the decision in Dina I declaring that Pulaya is the same caste as Pulayan notified as a scheduled caste under the Presidential Order 1950 as it then stood cannot be good law when Dina was expressly overruled Milind's case. It is entirely a different matter that subsequently as per Amendment Act 61 of 2002 Constitution (Scheduled Castes) Order, 1950 as amended by 1976 Act was amended whereby Entry 54 of Part VIII of Schedule to the Constitution (Scheduled Castes) Order, 1950 was substituted, including Pulaya also in addition to Pulayan which was there originally as scheduled caste.

40. Learned senior counsel appearing for the respondent argued that what is prohibited by the Constitution Bench in Milind's case is only holding an inquiry or letting any evidence to decide or declare that any caste or community or part or group within a caste or community is included in the general name "though it is not specifically mentioned in Entry" and also that a caste or sub-caste or part or group of any caste of community is "synonymous to the one mentioned in the Constitution (Secheduled Castes) Order, if they are not specifically mentioned in it" and therefore there is no bar for considering the question whether a caste specifically mentioned in the Constitution (Seheduled Castes) Order is synonymous to the other caste which is also mentioned in the order. The argument is that when original Entry 54 was Pulaya and Cheramar as per the substituted Entry 54, Pulayan, Cherarmar, Pulaya, Pulayar, Cherama, Cheraman are all included as Scheduled Castes and therefore respondent is entitled to let in evidence and the Court is also competent to declare or decide whether Pulayan and Cheramar are synonymous castes. Reliance was also placed on the 22nd Report submitted by the Standing Committee, on reference to the Constitution (Scheduled Castes) Order Amendment Bill, 2001 which was later passed as Act 61 of 2002 to support the submission that the purpose of the amendment was for inclusion of synonymous in respect of a caste in the existing list and also to club caste in the existing caste which are similar to one another from social and anthropological view.

41. Though the conclusion summarised in paragraphs 36 of the Constitution Bench decision in Milind's case declare that it is not all permissible to hold an inquiry or let in any evidence to decide or declare that any tribe or sub-tribe or part of a group or community is included in the general name eventhough if it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order and that it is not even permissible to say that any tribe or sub-tribe or part of or group of any tribe or community is synonymous to the one menioned in the Constitution (Scheduled Castes) Order, if they are not specifically mentioned in it, that does not mean that it permits letting any evidence or deciding or declaring that a caste mentioned in the Presidential Order, therein is synonymous to another caste mentioned in the order so long as it is not specifically shown in the Constitution Order. The Supreme Court in Basavalingappa's case (supra) considered the question of one caste being known in different names and held :—

> "It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore, must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the order. [See Aray (Mala) Dakkal (Dokkalwar etc.)] (underline supplied).

The Constitution Bench in Bhaiya Lal's case has also followed the same proposition. The later Constitution Bench in Milind's case also held :—

> "Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench Judgments aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included." (underline supplied).

Therefore so long as it is not expressly provided in the Constitution (Scheduled Castes) Order, 1950, it is not possible for the court to conduct an inquiry or to permit recording of evidence or to decide or declare that a caste included in the Constitution (Scheduled Castes) Order is synonymous to another caste included in the Constitution (Scheduled Castes) Order, so long as it is not specifically shown in the Order. In the light of the said finding, the argument of the learned senior counsel appearing for the respondent that Pulaya caste is synonymous to Cheramar caste cannot be accepted. As rightly pointed out by the learned senior counsel appearing for the petitioner, Entry 54 as amended by Act, 61 of 2002 to add that in addition to the original two castes namely Pulayan and Cheramar, eight new castes. None of the said castes are shown in brackets and there is a coma after mentioning each caste. The Supreme Court in **State of Maharashtra & Others v. Mana Adim Jamat Mandal [2006(4) SCC 98]** considered the importance of punctuation mark coma in group entries and held :—

"30. The common pattern found in most of the group entries is that there is a punctuation mark comma (,), between one entry and another entry in the group signifying that each one of them is deemed to be a separate Scheduled Tribe by itself. In the present case, Entry 18 of the Schedule clearly signifies that each of the tribe mentioned therein is deemed to be a separate tribe by itself and not a sub-tribe of "Gond". "Gond" is a Scheduled Tribe, it is not disputed. As already noticed that "Gond" including Arakh or Arrakh etc. found in Entry 12 of the Amendment Act, 63 of 1956 has been done away with by the Amendment Act of 1976. In Entry 18 of the Second Schedule of the Amendment Act of 1976 the word "including" was deliberately omitted, which signifies that each one of the tribes specified in Entry 18 is deemed to be a separate tribe by itself. Therefore, "Mana" is not a sub-tribe of "Gond" but a separate tribe by itself and is a Scheduled Tribe."

In the light of the said decision of the Apex Court it can only be found that Pulayan Cheramar, Pulaya, Cherama, Cheraman, Wayanadan Pulayan, Matha, Matha Pulayan are all distinct castes though they are all Scheduled Castes and one of the castes is not synonymous to the other castes shown in entry 54.

42. Though respondent was elected to Adoor Parliamentary Constituency which was reserved for Scheduled Caste during 1989, 1991, 1996 and 1999 and the election of the respondent to a reserved Constituency was not challenged by any of the defeated candidates or voter, it cannot be said that on that ground the election of the respondent cannot be challenged if he is not a member of the Scheduled Caste as per the Constitution Order and therefore not qualified to stand for election in a constituency reserved for Scheduled Caste. Though it was contended that on that ground the election cannot be questioned, as the competency of the respondent was not challenged in all the previous elections the submission cannot be accepted. The principles of res judicata has no application in a subsequent election petition even if there was challenged and decision on the competency of the respondent to stand for election in a Constituency reserved for Scheduled Caste challenged on the ground that he is not a member of the Scheduled Caste and therefore not qualified. In Arumugam case (supra) the question was considered by their Lordships in view of the fact that the competency of the respondent in that case was considered by the Supreme Court in the previous election in **S. Rajagopalv. C.M. Arumugam (AIR 1969 SC 101).** Their Lordships hold :—

"The decision given in a case relating to 1967 general election on the basis of evidence led in that case, cannot be res judicata in the present case which relates to 1972 general election and where fresh evidence has been adduced on behalf of the parties and more so, when all the parties in the present case are not the same as those in the earlier case. It is therefore, competent to consider whether on the evidence on record in the present case it can be said to have been established that on conversion to christianity in 1949, the first respondent ceased to belong to Adi Dravida caste".

The Supreme Court in **Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju and others [(2006) 1 SCC 212]** considering the decision in Arumugam's case held :—

"Every election furnishes a fresh cause of action for a challenge to that election and an adjudication in a prior election petition cannot be conclusive in the subsequent proceeding. Res judicata is nothing but the merger of a cause of action in a decree, transit in res judicatum. So, even if the cause of action in the earlier election petition merged in the final adjudication therein, since according to this Court, the subsequent election furnishes a fresh cause of action, the merger of the earlier cause of action with the decision therein cannot bar the trial of the fresh cause of action arising out of the subsequent election."

As far as the question of qualification of the respondent to contest the election in a Constituency reserved for Scheduled Caste, there is no other decision by any Court so far. Hence in any case there cannot be a question of attracting the principles of res judicata.

43. Then the argument of the learned senior counsel is that the fact that respondent was qualified to contest the election in a reserved Constituency was not so far challenged it is a material fact which could be taken note to hold that he is a member of the Scheduled Caste. It was pointed out that the evidence established that father of the defeated nearest rival candidate, the petitioner in E. P. 7/2009, was a leader of Kerala Pulaya Mahasabha and was also a Minister in the State of Kerala holding the portfolio of Scheduled Caste and Scheduled Tribe and he was one of the defeated candidates in the Parliamentary election 1996 in Adoor Parliamentary Constituency and if respondent was not a member of the Scheduled Caste and thereby not qualified to contest the election, Sri P. K. Raghavan would have raised an objection and at least after the declaration of the election of the respondent would have filed an election petition challenging the election of the respondent on the ground that he is not a member of the Scheduled Caste and thereby disqualified from contesting the election. It was also argued that the fact that respondent was representing a Constituency reserved for Scheduled Caste in 1989, 1991, 1996 and 1999 establish that the qualification to represent a Constituency reserved for Scheduled Caste was never in dispute and all the voters of the Constituency recognised and approved the respondent as a member of Scheduled Caste and therefore it can only be found that respondent is a member of Scheduled Caste and therefore qualified to represent the Mavelikkara Constituency. The argument is that the very fact that the respondent was being elected continuously from a Constituency reserved for Scheduled Castes

establish that he was accepted as a members of the Scheduled Caste by all to contest the members of the Scheduled Caste as he was representing them as their representative for more than a decade and that fact itself is sufficient to establish that respondent is qualified to stand for election in a Constituency reserved for Scheduled Caste.

44. The fact that the previous election of the respondent to the Parliament in a Constituency reserved for Scheduled Caste, was not challenged on the ground that respondent is not qualified to represent a Constituency reserved for Scheduled Caste is not a ground to dismiss the election petition or to hold that respondent is qualified to contest the election on that ground. If respondent is not a member of the Scheduled Caste, the fact that acceptance of his nomination paper was not challenged at the time of scrutiny of nomination paper in the previous elections or that his election to the reserved Constituency was not challenged are not valid grounds to hold that respondent is qualified to represent a Constituency reserved for Scheduled Caste. Moreover, take the case of a reserved Constituency where given case if there are 30% of total voters are Scheduled Caste voter. Even if 25% of those voters did not vote for a candidate, such a candidate could be elected if the majority of the remaining voters, who are not members of the Scheduled Caste vote for him. If such a candidate is elected in a Constituency reserved for Scheduled Caste, can it be said that the Scheduled Caste voters or members of that Caste has either approved or accepted that candidate as a member of the Scheduled Caste, eventhough he was elected to that Constituency reserved for Scheduled Caste, or he was disqualified to represent the Constituency as he is not a member of the Scheduled Caste. In an Assembly or Parliamentary election, a candidate could be elected to represent a Constituency reserved for Scheduled Caste even if the Scheduled Caste of that particular Constituency did not vote for him. If that be so, for the reason that such a candidate was elected cannot be taken as a ground to hold that the competency of that candidate was either approved or accepted by Scheduled Caste community of the Constituency.

45. It is to be born in mind that in a case of reconversion to Hinduism, the convert could claim the status of scheduled caste to which he originally belonged prior to the conversion to another religion, only if on such re-conversion, he was accepted by the members of the community. Therefore election of a candidate in a reserved constituency by itself is not a valid or proper yardstick to decide whether he was accepted by the members of the scheduled caste on such conversion. That is to be established independently. At best it could only be taken as an indication that the competency of the respondent was not challenged by the members of the scheduled caste who could have objected to or challenged the previous election of the respondent to a Constituency reserved for Scheduled Caste.

46. The Supreme Court in Madhuri Patil v. Addl. Commissioner, Tribal Development and others (AIR 1995 SC 94) considered the importance of the entries in the school register regarding the status of a person. Their Lordships held :—

> "the entries in the school certificate of the father of the appellants, Laxman Patil, being pre-independence period , it bears "great probative value" wherein he declared himself to be "Hindu Koli" which is now recognised as a backward class."

The question was considered in detail in Desh Raj v. Bodh Raj [(2008) 2 SCC 186] in the light of the earlier decision in Birad Mal Singhvi v. Anand Purohit (AIR 1988 SC 1796). In Birad Mal Singhvi's case (supra) after referring to Section 35 of Indian Evidence Act their Lordships held that an entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is not of much evidentiary value to prove the age of the person in the absence of material on which the age was recorded. It was also held that the entries regarding date of birth contained in the school register and the secondary school examination have no probative value as no person on whose information the dates of birth of aforesaid candidate was mentioned in the school record was examined and in the absence of the connecting evidence the documents produced to prove the age of the two candidates have no evidentiary value and unless the parents or persons conversant with the dates of birth were examined the entry in the school register by itself will not have much value. The Supreme Court in Desh Raj case (supra) held that the case is different in respect of a entry of case. It was held :—

> "In this case , we are concerned with the "caste" and not the date of birth. The residents of a village have more familiarity with the "caste" of a co-villager than the date of birth of the co-villager. Several villagers who knew the respondent and their father, including a cousin of the respondent has been examined and they have stated the caste of the respondent. The appellant has also produced other documentary evidence which clinch the issue, namely, the application made by the respondent's father for admission of the respondent to school, birth register extract and village Pariwar Register extracts to establish the caste of the respondent. Further the said entries in the school register were made nearly forty years prior to the election petition. When read with other oral and documentary evidence, it cannot be said that Ext. PW2 has no evidentiary value even by applying the strict standards mentioned in Birad Mal Singhvi."

Therefore, entry relating to the orignal caste of the respondent is relevant and material to decide the caste of the respondent. Ext. P9 the school admission register issued from GHSS, Ayiroopara establishes that respondent was admitted in that school on 7-6-1967 and he studied there till 5-5-1975 and transfer certificate was issued on 5-5-1975 after he passed Standard VII. Ext. P9 showsthe religion of the respondent as Christian and caste as Cheramar. Ext. P10 the admission register extract issued from LVHS,

Pothencode shows that he was admitted to that school in Std. VIII on 5-5-1975 and he left the school after passing the S.S.L.C. on 28-2-1978. His religion and caste is shown as Christian Cheramar as is the case in Ext. P9. Ext. R2 the original S.S.L.C. book (Ext. P4 being the extract of the relevant third page of the said book) also shows that religion of the respondent was Christian and caste Cheramar. Though respondent had passed the S.S.L.C. in March 1978, the Sudhi ceremony allegedly performed by the respondent was on 25-5-1978, two months after the S.S.L.C. examination. It is by that Sudhi ceremony and Ext. R9 Gazette Notification respondent claims that he was converted to Hinduism. Respondent joined the Collage thereafter . Though Ext. R6 the admission extract of Law Collage, Thiruvananthapuram wherein the name of the respondent is shown as Suresh distinct from Monian shown till then in the school records, evidently consequent to the Sudhi ceremony and the conversion , religion is shown as Hindu and caste Cheramar. It cannot be disputed that if respondent was a Christian till he was converted to Hinduism in 1978, he cannot belong to Cheramar caste which is a scheduled caste of Hindu religion earlier to that date. Even though it was declared by the Supreme Court in Ambalagan's case (supra) that precedent particularly those from South India establish that no particular ceremony is prescribed and a convert regains his caste however irrational it may appear which is so deep-rooted in the India People that its mark does not seem to disappear on conversion to a different religion and even if it disappears, it disappears, only to reappear on reconversion and the mark of caste does not seem to really disappear even after some generations after conversion, it cannot be said that on conversion to Christianity he can continue the old caste, as there is no caste in Christianity. A converted christian cannot claim that he continues to be a member of the original caste. The Constitution Bench decision in Guntur Medical College case (supra) held that there is no absolute rule applicable in all cases that whenever a member of a caste is converted from Hinduism to Christianity he loses his membership of the caste and as pointed out in Arumugam's case, ordinarily it is true that on conversion to Christianity a person would cease to be a member of the caste to which he belongs. But it is not an invariable rule. It would depend on the structure of the case and its rules and regulations. It was declared by the Constitution Bench that there are some caste particularly in South India where this consequence does not follow on conversion since such castes comprise both Hindus and Christians. If there is no evidence to show that either Cheramar caste or Pulaya caste comprise both Hindus and Christians the said principals cannot be applied. There is no evidence to establish that Pulayan Caste or Cheramar caste permit continuation of the membership in that caste, in spite of the conversion to another religion. In the absence of such evidence, it can only be held that the rule that on conversion to Christainity a person would cease to be a member of the Cheramar caste or Pulayan caste is not the invariable law. True, if the original caste permits continuation of the membership of a convert after his conversion into another religion, the position would have been different. But there is no evidence to establish that either the Pulaya caste or the Cheramar caste permits a member of that caste to convert to Christanity and at the same time continue the membership of either Pulaya caste or Cheramar caste. Therefore the entry in the school register that respondent is a Cheramar when he is a Christian can only be ignored. At best it would indicate that parents of 'respondent before their conversion to Christianity was a Cheramar. But on conversion to Christianity, as Christianity does not permit a caste system, they lost their original caste. Therefore the children born to them till they are reconverted cannot claim the status as members of the original caste of the parents. Therefore in spite of the entry of caste in the relevant registers and S.S.L.C. book it can only be found that respondent was a Christian and was not a member of a Cheramar caste.

47. Even if it is taken that respondent was converted to Christianity subsequently he cannot automatically regain the status of the membership of the original caste on such conversion. It is possible only if on such reconversion he was accepted by members of the original caste to their fold. Question is whether there is evidence to prove the conversion as well as the acceptance of the respondent to the fold of the original caste by the members of that caste.

48. As held by the Supreme Court in Arumugam's case and Ambalagan's case (supra) no expiatory ceremony is necessary for reconversion into Hinduism from Christianity. It would be necessary only if the original caste of the convert insists for performance of an expiatory ceremony for such reconversion. The respondent has relied on. Ext. R10 certificate issued by the Kerala Hindu Mission as well as Ext. R9 Gazette Notification to prove that he was converted to Hinduism. Even if there was such conversion that conversion can only be to Hinduism and not to any particular caste of the Hindu religion. As rightly argued by the learned counsel appearing for the petitioners. Ext. R9 and R10 cannot be used for establishing a valid conversion from Christianity to Hinduism. Admittedly on 25-5-1978 respondent was aged less than 18 years as he was born on 4-6-1962 as admitted by him and shown in the third page of Ext. R2 S.S.L.C. book and all the admission register extracts relating to the respondent issued from the school where respondent studied. There cannot be a valid conversion by a minor to another religion. Legally it is possible only on the minor attaing majority . Therefore even if there was a Sudhi ceremony as shown in Ext. R10 and there was a conversion, in law it is not valid. Similarly when Ext. R9 Notification was published by the brother of the respondent and not by the mother, the legal or natural guardian, Ext. R9 Notification also cannot be made use of, to prove the conversion. Therefore based on Ext. R9 and R10 , it is not possible to hold that respondent was converted to Hinduism.

49. Paragraph 3 of the Constitution (Scheduled caste) Order 1950 only provides that no person who professes a religion different from the Hindu (the Sikh or the Buddhist) religion shall be deemed to be a member of a

Scheduled Castes. When no ceremony is to be performed for conversion and even without performing any ceremony, a Christian can profess Hinduism and can thereby become a Hindu even if there is no evidence to prove a valid conversion respondent continued to be a Hindu by professing Hindu religion. Question is whether there is if there is evidence to prove that respondent was professing the Hindu religion.

50. Respondent as RW1 deposed that after the reconversion in 1978 he was living as Hindu and was never attending Church and was professing only Hindu religion. The original name of the respondent was Monian. It was changed to Suresh indicating the conversion Hinduism. He was admitted in Law College, Thiruvananthapuram in 1984 in that name. He was shown as Hindu in the admission register. There is no evidence to show that respondent was professing Christianity thereafter. Respondent has married a member of the Scheduled Caste. The evidence of RW1 and RW6 his old classmate would establish that he has been living as a Hindu. Eventhough RW1 was cross examined with regard to Ext. R15 the marriage album to show that the marriage ceremony was conducted not in accordance with the marriage of a Cheramar or Pulaya caste, it was admitted case that the marriage of the respondent was not conducted following the ceremonies of a Christian marriage. The case is only that it was not following the custom of a marriage of Pulaya or Chamar. From 1989 onwards respondent was contesting the Parliament election declaring that he is a Hindu. He was elected for the Lok Sabha on four elections. It establishes that respondent has been declaring that he is professing Hinduism. There is no evidence to prove the contrary. Hence on the evidence, it can only be found that respondent has been professing Hindu religion at least from his admission to the Law College,Thiruvananthapuram.

51. The crucial question therefore is even though respondent has been professing Hindu religion and his father originally belonged to a Scheduled Caste, whether respondent was accepted as a member of the Scheduled Caste? As stated earlier, the school register shows that respondent was shown as a Cheramar caste. Though petitioners contended that the respondent contested the previous elections as a member of Pulaya caste, respondent produced Ext. R8(a) and R8(b) caste certificates issued to him by Tahsildar, Nedumangad which were produced by the respondent in the previous elections. Those certificates show that respondent was certified to be a member of Cheramar caste and not Pulaya caste. But it is admitted by the respondent that after submitting Ext. P2 Caste Certificate obtained from Tahsildar, Nedumangad to the effect that he is a member of Cheramar caste, respondent had submitted an application for issuance of another Caste Certificate before Tahsildar, Kottarakkara claiming that he is a member of Pulaya Caste. Ext. X3 is that file produced from Tahsildar,Kottarakkara. Evidence of PW8, the Tahsildar and PW10, the Village Officer with Ext. X3 file establish that Ext. X3(a) application was submitted by the respondent before Tahsildar, Kottarakkara on 4-3-2009. In Ext. X3(a) respondent stated that he intends to file his nomination paper to Mavelikkara Reserved Constituency and for that purpose he has to produced a Caste Certificate to the effect that he is a member of Hindu Pulaya Caste. He therefore requested the Tahsildar to issue Caste Certificate to the effect that he is a member of Pulaya Caste. PW8 , the Tahsildar on receipt of the application forwarded it to the Village Officer, Kottarakkara on 5-3-2009. Ext. X3 application (a) application does not show when it was received by the Tahsildar . PW10, the Village Officer has submitted Ext. X3 (b) report on the reverse side of Ext. X3 (a) application. The report is to the effect that the inquiry reveals that respondent the son of late Kunjan and Thankamma belong to Hindu Pulaya Caste and he is living following the Hindu Pulaya Caste and father late Kunjan was also of Hindu Pulaya caste. There is no mention in Ext. X3(b) that the parents either Kunjan or Thankamma were converted Christians. Ext. X3 (b) report is prepared by PW10 on the same day and it was received by PW8 also on the same day and he passed an order at the bottom of the report to issue the Caste Certificate as sought for. Consequently Ext. P1 Caste Certificate was issued to the respondent stating that he belongs to Hindu Pulaya caste . Evidence of PW10 the Village Officer shows that he is a Pulaya . As per the evidence of PW10, he has reported that the parents are Hindu Pulaya following the practice of Hindu religion and respondent belongs to Hindu Pulaya Caste based on his personal knowledge. PW10 claimed that he had acquaintance with the respondent from 1997 onwards and he had enquired with the office-bearers of Kerala Pulayar Mahasabha and got satisfied that respondent is a member of Pulaya caste. When a specific suggestion was put to the witness by the counsel appearing for the petitioner in E.P. 7/2009 that respondent is not a Hindu Pulaya and is not living as Hindu, PW10 denied the suggestion and asserted that he is a Hindu Pulaya. The evidence of PW8, the Tahsildar who issued Ext. P2 Certificate shows that witness had examined S.S.L.C. book of the respondent and had found that his religion was entered as Christian and caste as Cheramar. He was asked in the light of the said entry how he accepted Ext. X3 (b) report of the Village Officer that he belongs to Pulaya caste. The witness had stated that he verified the Sudhi Certificate and the Gazette Notification and they showed he was converted to Hinduism. But both the Sudhi Certificate and the Gazette Notification show that he is a Hindu Cheramar. But the respondent in his application stated that he belongs to a Hindu Pulaya. Still he accepted the report and issued the certificate. In cross examination PW8 also deposed that he is aware that there are different organisations for different scheduled castes in Kerala and Kerala Pulayar Mahasabha and Cheramar Sangh are such organisations and those organisations represent these separate caste. PW7 also deposed that a person known as Cheramar in Kollam is known as Pulaya in Kottarakkara but no value could be

attached to that evidence. In any case as held earlier, in view of Entry 54 of Scheduled to Constitution (Scheduled Castes) Order 1950, as it stood even before it was amended by Act 61/2002 Pulyayan and Cheramar are different and distinct castes. Even after the Entry 54 was substituted by the Act 61/2002, Pulayan and Cheramar are different and distinct castes. Therefore, if respondent was a member of Cheramar caste, he cannot be a member of Pulayan caste as per the Constitution Order. If respondent was a member of Cheramar caste, he could not have asserted in Ext. X3(a) application that he is a member of Pulaya Caste. Respondent was cross examined with reference to Ext. X3 (a). According to RW1 in Karala one caste is known in different names in different Districts and in Kottarakkara Cheramar caste is known as Pulaya.

The relevant portion of the evidence reads:—

"If you belong to Cheramar caste why did you apply to issue a Caste Certificate showing that you belong to Hindu Pulaya (Q) I was born and brought up in Vembayam Village in Thiruvananthapuram District. I was made to understand that I have to obtain a Caste Certificate from my place of birth (A)."

He did not specifically answer the question. Respondent was again asked when he become a Cheramar after 5-3-2009 as he obtained a certificate on 5-3-2009 that he belongs to Pulaya caste. The answer was even earlier he is a Cheramar and he had explained the reason earlier. Respondent has also examined RW5 who is the General Secretary of Kerala Pulayar Mahasabha. Evidence of RW5 establishes that there has been a split in the Organisation and one faction is lead by the President and other faction by RW5. Evidence of RW5 is that respondent belongs to Pulaya caste. Rw5 was examined to prove that respondent was accepted by the community. Even if the evidence of RW5 is accepted, it would only establish that respondent was accepted by the Pulaya community and not by Cheramar community. Even evidence of RW5 is insufficient to prove that respondent was accepted by the Pulaya community. Though the attempt was to establish that respondent had participated in the rally organised by the Kerala Pulaya Mahasabha and thereby he was accepted by the community, the evidence show that respondent had only participated in the public meeting convened in connection with public rally. Evidence of RW5 also establish that respondent was invited for the function in his capacity as Secretary of AICC. It is also established that in that public rally leaders of other community and leaders of Congress Party had participated. It was addressed by Smt. Sonia Gandhi, the President of Congress party. So also the President of KPCC, the opposition leader had all participated in the rally. By their participation they will not become members of the Pulayar community. It cannot also be stated that by their participation they were accepted to the fold of that community. Hence for the reason that respondent had participated in the public meeting or was instrumental in getting the participation of Smt. Sonia Gandhi, it cannot be said that respondent was accepted by the Pulayar community as a member of their community. Even if it is taken that he was so accepted, it would only destroy the claim of the respondent that he is a member of the Cheramar caste.

52. RW2 the Principal of Government Law College, Thiruvananthapuram was examined only to prove Ext. R6 admission register. RW4 the Deputy Director of Education, Kollam was examined to prove that respondent is a member of the Scheduled Caste. Evidence of RW4 shows that he retired as Deputy Director of Education, Kollam and he belongs to Kanikkaran community which is a Scheduled Tribe and during 1989 he was the Headmaster in a Government High School and since then he had acquaintance with the respondent, who was then representing Adoor Parliamentary Constituency and he had participated in the marriage ceremony of the respondent, which according to the witness was performed in accordance with the ceremonies of Hindu religion. The evidence of RW4 even if accepted will not establish that respondent was accepted by members of Cheramar caste to their fold. RW6 the old schoolmate of the respondent was examined to prove that respondent was living as Hindu. His evidence even if accepted will not establish that respondent was accepted by the Cheramar caste or Pulaya caste to their fold. What remains is the evidence of RW7 and Ext. R17 and R19 certificates. The evidence of RW7 shows that his father was the Secretary of Kerala Cheramar Sangh, an organisation of Cheramar caste till 1980 and he was the District Secretary of that Organisation during 1972 to 1980 and S. Rajaratnam was the President of the Cheramar Sangh and he is familiar with the signature of Rajaratnam and the signatures seen in Exts. R17 and R19 are that of Rajaratnam. In the course of his examination the witness did not say anything about the acceptance of the respondent by the members of Cheramar caste to their fold. His evidence establish that Cheramar Sangh was defunct from 1980 onwards and his father also disassociated with the Organisation after 1979-80. Evidence of RW7 also shows that Rajaratnam the President was receiving donations and fees for issuing certificates. Ext. R17 and R19 are to be appreciated in that background. Ext. R17 is dated 25-10-1979. In the said certificate Rajaratnam as President certified that respondent had embraced Hinduism as per the Sudhi certificate issued by Kerala Hindu Mission and his name as per the SSLC book was Monian J. and he was a Cheramar Christian and by performing Sudhi certificate he was admitted to Hindu Vedic Dharma. It is then stated "being a decendant of Scheduled Caste convert and by the conversion, J. Suresh is hereby accepted and admitted into the fold of Hindu Cheramar community by its members who are Cheramar Hindu and by this fact has become a member of Cheramar Community which is recognised as a Scheduled Caste." Ext. R20 is another certificate issued by the same President reiterating the same fact. By proving the signature in Ext. R17 and R20, the acceptance of the respondent to the fold of Cheramar community stated therein cannot be upheld, in the absence

of any other acceptable evidence. It is more so, when the evidence of RW7 establishes that the President has been issuing Certificates after receiving donations and fees. The evidence of RW7 also establishes that Ext. R20 certificate was issued after the Sangh became defunct. Moreover, even if the certificates are accepted, it would only show that because of the Sudhi ceremony and the conversion, respondent was accepted to their fold Ext. R17 certificate also shows that the certificate was issued at a time when the respondent was a minor and the minor could not have exercised his discretion. In such circumstances, Ext. R17 also will not establish that respondent was accepted by the Cheramar community to their fold.

53. Therefore from the evidence it can only be found that even though respondent has been professing Hinduism, there is no acceptable evidence to prove that respondent was accepted as a member of either the Cheramar caste or the Pulaya caste by the members of that caste. Therefore respondent who was born to the converted Christian parents, is not entitled to claim the benefits and privilege available to the members of those castes unless he was accepted to their fold by the original caste. As there is no evidence for such acceptance it can only be found that respondent is not a member of the Cheramar and thereby the scheduled caste. If that be so, he is disqualified to contest Mavelikkara Parliamentary Constituency, as it is a Constituency reserved for scheduled caste. If that be so, the election of the respondent to the Mavelikkara Parliamentary Constituency has to be declared void. His election is liable to be set aside.

54. Point No. 4 in E.P. 7/2009:— I have already found that respondent is not a member of the scheduled caste. Under clause (a) of Section 4 of the Representation of the People Act, a person shall not be qualified to be chosen to fill a seat in the House of the People unless in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency. Under sub-section (2) of Section 33 of the Representation of the People Act, 1951, in a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste, or, as the case may be, a Scheduled Tribe of the State. Therefore to enable the respondent to contest the election to Mavelikkara Parliamentary Constituency, he must be a member of a scheduled caste and unless his nomination paper contains a declaration by him specifying the particular caste of which he is a member and the area in relation to which the caste is a scheduled caste, his nomination paper cannot be accepted by the Returning Officer. Section 36 of the Representation of the People Act, 1951 provides for scrutiny of nomination paper. Under clause (2)(a) of Section 36, the returning officer shall examine the nomination papers on the date fixed for the scrutiny of nomination papers and shall decide all objections which may be made to any nomination and may either, on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination if on the date fixed for scrutiny of nominations the candidate is either not qualified or is disqualified for being chosen to fill the seat under any of the provisions of Articles 84,102,173 and 191 of the Constitution of India or under clause (b) there has been a failure to comply with any of the provisions of Section 33 or 34. If there has been non-compliance of the provisions of Section 33 (2) the returning officer is bound to reject the nomination paper. The evidence of PW7 the District Collector who was the Returning Officer of the Parliamentary Constituency with Ext. X2 file containing Ext. P3 proceedings show that at the time of scrutiny of the nomination paper, the Returning Officer accepted the nomination paper submitted by the respondent after hearing the objections. The claim of the respondent was that he is a member of the scheduled caste as he belong to Hindu Cheramar caste. Ext. P2 caste certificate to that effect issued by the Tahsildar, Nedumangad was pressed into service for that purpose. The evidence of PW 7 establishes that as objection was raised to the acceptance of caste certificate he had called for reports and only thereafter the nomination paper was accepted. But when the respondent had claimed in the nomination paper that he belongs to Cheramar caste, he has also produced certificate showing that he belongs to Pulaya caste. When the candidate produced mutually contradictory caste certificates issued by the Tahsildar of Kottarakkara and Nedumangad, the Returning officer should not have accepted the nomination paper without a finding that the respondent is a member of a particular caste mentioned in the Constitution (Scheduled Castes) Order 1950 and the candidate has satisfied the provisions of sub-section (2) of Section 33. As I have already found that respondent is not a member of the scheduled caste, acceptance of his nomination paper, in spite of the objection raised, can only be held improper. It is therefore proved that there was improper acceptance of nomination paper of the respondent. It is hence declared that the nomination paper submitted by the respondent to Mavelikkara Parliamentary Constituency was improperly accepted.

55. Under clause (a) of sub-section (1) of Section 100 of the Representation of the People Act, 1951 if a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the Representation of the People Act on the date of his election, the High Court shall declare the election of the returned candidate to be void. As it is found that respondent was not qualified to be chosen to fill the seat for the Mavelikkara Parliamentary Constituency reserved for Scheduled Caste, his election can only be declared void. Under clause (d) (i) of sub-section (1) of Section 100 of the Representation of the People Act, the result of the election, insofar as it

concerns a returned candidate, it has been materially affected by the improper acceptance or any nomination, High Court shall declare the election of the returned candidate to be void. As the respondent is not qualified to be chosen to fill a seat reserved for Scheduled Caste as he was not a member of the Scheduled Caste on the date of acceptance of his nomination paper and respondent was elected, it can only be found that the election of the Mavelikkara Parliamentary Constituency has been materially affected by the improper acceptance of the nomination paper submitted by the respondent the returned candidate. Therefore his election has to be declared void under Section 100 (1) (d) (i) also.

E.P. 3/2009 and 8/2009 are allowed. The election of the respondent to Mavelikkara Parliamentary Constituency is declared void under Section 100 (1) (a) of the Representation of the People Act.

E.P. 7/2009 is allowed. The election of the respondent to Mavelikkara Parliamentary Constituency is declared void under Section 100 (a) and 100 (1) (d) (i) of the Representation of the People Act.

Registry to communicate the substance of the decision to the Election Commission and the Speaker of the Lok Sabha forthwith and send an authenticated copy of the judgment to the Election Commission as mandated under section 103 of the Representation of the People Act, 1951.

M. SASIDHARAN NAMBIAR, Judge

[No. 82/KL-HP/(3,7&8/2009)/2010]

By Order,

TAPAS KUMAR, Principal Secy.

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